

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

010

JOINT APPENDIX
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

No. 21,043

UNITED STEELWORKERS OF AMERICA,
AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

United States Court of Appeals
for the District of Columbia Circuit

and

Respondent,

FILED JAN 2 1968 LUXAIRE, INC.,

Intervenor,

Nathan J. Paulson No. 21,338

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LUXAIRE, INC.,

Respondent.

On Petition to Review and Cross-Petition
for Enforcement

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 21,043

UNITED STEELWORKERS OF AMERICA,
AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

LUXAIRE, INC.,

Intervenor,

No. 21,338

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LUXAIRE, INC.,

Respondent.

On Petition to Review and Cross-Petition
for Enforcement

JOINT APPENDIX

(i)

INDEX

J.A.
Page

Case Nos. 21,043 & 21,338

Prehearing Conference Stipulation, dated October 19, 1967	1
Prehearing Order, dated	5

Case No. 8-RC-5933

Excerpts from Transcript of Proceedings, Before the NLRB, August 24, 1965	6
Proceedings	7

Witnesses:

Tr.
Page

Theodore W. O'Dell

Direct	11	8
Direct (Cont'd.) Aug. 25, 1965	106	9
Cross	145	33
Redirect	188	59
Recross	190	60

Ron W. Lindsay

Direct	209	69
Cross	217	74
Redirect	243	87-88

Friday, September 3, 1965

Theodore W. O'Dell

Direct	249	90
Voir Dire	250	91

Richard Minnich

Direct	260	94
Cross	262	96
Redirect	269	100
Recross	274	104

Edward Navratil

Direct	295	118
Cross	298	120

William Taggart

Direct	307	126
Cross	316	131
Direct	338	143
Redirect	342	147
Cross	343	147

(ii)

	<u>Tr.</u> <u>Page</u>	<u>J.A.</u> <u>Page</u>
Michael S. Klimko		
Direct	345	148
Cross	360	158
Redirect	368	164

Petitioner's Exhibits:

No. 1	— Letter to All Hourly Payroll Employees (and other Elyria Plant employees) from R. W. Lindsay, Pres., The C.A. Olsen Manufacturing Co., dated May 28, 1965	166
No. 2	— Letter to All Hourly Payroll Employees (and other Elyria Plant employees) from R. W. Lindsay, Pres., The C. A. Olsen Manufacturing Co., dated March 8, 1965	168
No. 3	— Letter to All Hourly Payroll Employees (and other Elyria Plant employees) from R. W. Lindsay, Pres., The C. A. Olsen Manufacturing Co., dated April 29, 1965	170
No. 4	— Letter to All Hourly Payroll Employees (and other Elyria Plant employees) from R. W. Lindsay, Pres., The C. A. Olsen Manufacturing Co., dated May 6, 1965	173
No. 5	— Letter to All Hourly Payroll Employees (and other Elyria Plant employees) from R. W. Lindsay, Pres., The C. A. Olsen Manufacturing Co., dated May 13, 1965	176
No. 6	— Letter to All Hourly Payroll Employees (and other Elyria Plant employees) from R. W. Lindsay, Pres., The C. A. Olsen Manufacturing Co., dated May 20, 1965	179

Company's Exhibits:

No. 2	— Letter to All Hourly Rated Employees of C. A. Olsen Co. from William Taggart, Representative, United Steelworkers of America, AFL-CIO, District No. 28	181
	Campaign Flyer Depicting Company Benefits	183
No. 3	— Excerpts from Agreement Between The Henry Furnace Co. and Local No. 2195, United Steelworkers of America, AFL-CIO, dated April 1, 1964	184
	Appendix "A" - Incentive Classification Table of Company Employees	186
<u>Case No. CA-5339</u>		
No. 4	— Handbook for Hourly Employees of The C. A. Olsen Manufacturing Co.	187
No. 5	— Table "A", Non-Incentive Base Rates for Employees of The C. A. Olsen Manufacturing Co.	203
No. 6	— Table "B", Incentive Rates, Week Ending May 23, 1965, for Employees of the C. A. Olsen Manufacturing Co.	205
No. 7	— Comparison of Weld Assembly — Standard Minutes Including Fatigue, Personal and Incentive Allowances	206
<u>Case No. 8-CA-5933</u>		
No. 8a	— Non-Incentive Classification and Rate Sheets for The Henry Furnace Co., Week Ending 5-30-65, 1st Shift	207
No. 8b	— Non-Incentive Classification and Rate Sheets for The Henry Furnace Co., Week Ending 6-6-65, 1st Shift	231
No. 9a	— Incentive Classification and Rate Sheets for Luxaire, Inc., Week Ending 5-30-65	255

Company's Exhibits (cont'd):

No. 9b — Incentive Classification and Rate Sheets for Luxaire, Inc., Week Ending 6-6-65	267
---	-----

Docket No. 8-CA-4272

Excerpts from Transcript of Proceedings, Before the NLRB, September 29, 1966 . . .	279
---	-----

Proceedings	280
-----------------------	-----

Witnesses:Tr.
Page

Harold A. Smith

Direct	12	285
Direct	16	288
Cross	28	295
Redirect	41	305

Donald Lee Alexander

Direct	43	305
Cross	48	308
Redirect	50	310

Ray Bentley

Direct	52	310
Direct	54	312
Cross	73	324
Redirect	77	327
Recross	78	327

Charles Scrivens

Direct	79	328
Direct	82	329
Cross	84	331

Bernard S. Becker

Direct	97	340
------------------	----	-----

Delis B. Huddleston

Direct	101	342
Cross	106	346

General Counsel's Exhibits:

No. 1-A — Charge Against Employer, Filed June 21, 1966	349
---	-----

Attachment to Charge	350
----------------------	-----

General Counsel's Exhibits (cont'd):

No. 1-C —	Complaint and Notice of Hearing, dated August 1, 1966	352
	Attachment to Complaint, Statement of Standard Pro- cedures In Formal Hearings Held Before the NLRB In Unfair Labor Practice Cases	358
No. 1-H —	Answer to Complaint and Notice of Hearing, dated September 19, 1966	361
No. 1-I —	Motion to Amend the Complaint and Notice of Hearing	
No. 1-J —	Memorandum in Opposition to Charging Party's Motion, dated September 23, 1966	368

Charging Party's Exhibits:

No. 1 —	Luxaire, Inc., Elyria, Ohio Plant Employees Who Began Striking On April 1, 1966 and Who Performed Picket Duty	370
No. 2 —	Luxaire, Inc., Elyria, Ohio Plant Employees Who Were On Strike Beginning April 1, 1966 Who Did Not Perform Picket Duty . . .	376
No. 3 —	Roster of Employees of Luxaire Factory	378
No. 4 —	Letter to All Striking Employees (except Probationary Employees at The Henry Furnace Co. and Luxaire, Inc.) and for all Other Employees, from E. S. Glines, Pres., Luxaire, Inc., dated May 2, 1966	413
No. 5 —	Letter to Mr. Roger D. Summers from T. W. O'Dell, Personnel Director, Luxaire, Inc., dated April 26, 1966	414

Charging Party's Exhibits (cont'd):

No. 6	— Letter to All Hourly Employees and All Other Employees of Luxaire, Inc. from E. S. Glines, President, dated March 23, 1966	415
No. 7	— Letter to All Employees Who Are <u>Not</u> at Work at Elyria and for All Other Employees, from E. S. Glines, Pres., Luxaire, Inc., dated April 5, 1966	417
No. 8	— Letter to All Employees from J. E. O'Neill, Secretary-Treasurer, Luxaire, Inc., dated April 15, 1966	419
No. 9	— Letter to Striking Elyria Employees and for All Other Employees, from E. S. Glines, Pres., Luxaire, Inc., dated April 21, 1966	420
No. 10	— Letter to All Striking Employees and for All Other Employees, from E. S. Glines, President, Luxaire, Inc., dated May 25, 1966 . . .	421
No. 11	— Letter to All Luxaire Hourly Employees at Elyria from E. S. Glines, President, dated June 17, 1966	422

Joint Exhibits:

Stipulation, dated September 29, 1966 . . .	423
Stipulation Exhibit A — Petition of The C. A. Olsen Mfg. Co. Before the NLRB, filed April 19, 1965	426
Stipulation Exhibit B — Stipulation for Certification Upon Consent Election of The C. A. Olsen Mfg. Co. Before the NLRB, dated May 11, 1965	429
Stipulation Exhibit C — Tally of Ballots, Case No. 8-RC-5933, dated June 4, 1965	433
Stipulation Exhibit D — Hearing Officer Report on Challenged Ballots and Objections to Conduct Affecting the Results of An Election, dated October 1, 1965	435

Joint Exhibits (cont'd):

Stipulation Exhibit E — Decision and Direction, dated February 18, 1966	459
Stipulation Exhibit F — Revised Tally of Ballots, dated February 25, 1966.	464
Stipulation Exhibit G — Certification of Representative, dated March 2, 1966	466
Stipulation Exhibit H — Rules of Conduct	467
Stipulation Exhibit I — Notice to Employees, dated March 11, 1966	468
Stipulation Exhibit J — Letter to Mr. Ronald Lindsay, Pres., Luxaire, Inc., from William Taggart, Representative, United Steelworkers of America, AFL-CIO, dated March 15, 1966	469
Stipulation Exhibit K — Letter to Mr. E. S. Glines, Pres., Luxaire, Inc., from William Taggart, Representative, United Steelworkers of America, AFL-CIO, dated March 20, 1966	470
Stipulation Exhibit L — Letter to Mr. William Taggart, Rep., United Steelworkers of America, from E. S. Glines, Pres., Luxaire, Inc., dated March 21, 1966.	472
Stipulation Exhibit M — Letter to Mr. E. S. Glines, Pres., Luxaire, Inc. from William Taggart, Rep., United Steelworkers of America, dated March 30, 1966	473
Stipulation Exhibit N — Letter to Mr. William Taggart, Rep., United Steelworkers of America, from Mr. E. S. Glines, Pres., Luxaire, Inc., dated March 31, 1966	475
Stipulation Exhibit O — Letter to All Elyria Hourly Employees from R. W. Lindsay, Pres., C. A. Olsen Mfg. Co.,	477

Joint Exhibits (cont'd):

Stipulation Exhibit P — Letter to All Hourly Employees (Elyria), from E. S. Glines, Pres., Luxaire, Inc., dated March 30, 1966	478 478
Stipulation Exhibit Q — Letter to All Employees from R. W. Lindsay, Pres., C. A. Olsen Mfg. Co., dated March 8, 1966	479
Stipulation Exhibit R — Letter to All Production and Maintenance Em- ployees (and All Other Employees) from R. W. Lindsay, Pres., C. A. Olsen Mfg. Co., dated March 11, 1966	481
Stipulation Exhibit T — Letter to All Production and Maintenance Em- ployees (and All Other Employees) from E. S. Glines, Pres., Luxaire, Inc., dated March 29, 1966	482
Trial Examiner's Decision	483
Appendix — Notice to All Employees	499
Decision and Order	501

JOINT APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STEELWORKERS OF	:	
AMERICA, AFL-CIO,	:	
	:	
Petitioner,	:	
	:	
v.	:	No. 21,043
	:	
NATIONAL LABOR RELATIONS	:	
BOARD,	:	
	:	
Respondent,	:	
	:	
and	:	
	:	
LUXAIRE, INC.,	:	
	:	
Intervenor.	:	
* * * * *		
	:	
NATIONAL LABOR RELATIONS	:	
BOARD,	:	
	:	
Petitioner,	:	
	:	
v.	:	No. 21,338
	:	
LUXAIRE, INC.,	:	
	:	
Respondent.	:	
* * * * *		

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court,
the parties, subject to the Court's approval, hereby
stipulate and agree as follows:

I. THE ISSUES

The issues in No. 21,043 are as follows:

1. Whether the Board's disposition of the Union's request to amend the complaint was proper.

2. Whether the Board's determination that the Company did not threaten additional reprisals, as alleged in the General Counsel's complaint, was proper.

3. Whether the Company violated Section 8(a)(5) of the Act by its refusal on and after March 30, 1966, to recognize and bargain with the Union, independently of its obligation under the certification of March 2, 1966. (The Union contends that No. 3 is in issue. The Board and the Company contend that No. 3 is not in issue. In addition, the Company contends that even if No. 3 is in issue, the Company had no obligation to recognize and bargain with the Union independently of the Board's certification.)

The issues in Case No. 21,338 are as follows:

1. Whether the Board properly found that the Company violated Section 8(a)(1) of the Act by maintaining and enforcing a rule against unauthorized selling, soliciting, or canvassing on Company property, and by the promulgation of a no-solicitation rule with an anti-Union motivation.

2. Whether the Board properly found that the Company, in violation of Section 8(a)(1) of the Act, threatened employees with reprisals for engaging in strike activity. (The Board contends that consideration of issue No. 2 should be confined to a determination of whether substantial evidence supports the Board's findings.)

3. Whether the Board properly certified the Union as the bargaining representative of the Company's employees. (The Board contends that the Company's attack on the Union's certification should be confined to its objection to the underlying election, based on an alleged misrepresentation contained in a Union campaign letter.)

4. Whether the Board properly found that the Company unlawfully refused to bargain with the Union.

II. THE JOINT APPENDIX

1. The relevant portions of the record shall be reduced to a joint appendix comprising the materials the parties shall designate.

2. The Union shall designate those portions of the record in Case No. 8-CA-4272 required to be reproduced by the Rules of this Court (including the Board's Decision and Order, the Trial Examiner's Decision, this stipulation and the Court's Order thereon) and shall bear the cost of reproducing these materials. The Board shall designate the formal papers required by the Rules of this Court in the underlying representation case (8-RC-5933) and shall bear the cost of reproducing these materials.

3. Each party will designate such additional material as it wishes to reproduce and shall bear the cost of reproducing the material which it designates. The printing of the joint appendix shall be the responsibility of the Board.

4. The Union shall serve the Board and Company with its designation on or before October 16, 1967. The Board shall serve the Union and Company with its designation on or before October 21, 1967. The Company shall serve the Board and Union with its designation on or before October 26, 1967.

5. Forty (40) copies of the joint appendix shall be printed under this stipulation; the required number of copies shall be filed with the Court and the remaining copies shall be divided among the parties.

6. In order to assure that the filing of briefs will not be delayed pending the printing of the joint appendix, the parties agree that briefs may initially be filed in typewritten form with record references to the original transcript and exhibits. The printed appendix and briefs in printed form, containing references to the joint appendix, will be filed in the Court on or before the time the petitioner's reply brief is filed.

7. The parties and the Court may refer to any portion of the original transcript of record or exhibits therein which has not been reproduced, it being understood that any portion of the record thus referred to will be printed in a supplemental joint appendix.

Dated at
Washington, D. C.
this 19th day of
October, 1967

/s/ Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR
RELATIONS BOARD

Dated at
Washington, D. C.
this 19th day of
October, 1967

/s/ Michael Gottesman
Counsel for Union

Dated at
Washington, D. C.
this 19th day of
October, 1967

/s/ Stanley R. Strauss
Counsel for Luxaire, Inc.

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,043

September Term, 1967

United Steelworkers of America,
AFL-CIO

Petitioner,

v.

National Labor Relations Board,

Respondent.

21,338

National Labor Relations Board

Petitioner,

v.

Luxaire, Inc.,

Respondent.

Before: Bazelon, Chief Judge, in Chambers.

PREHEARING ORDER

On consideration of the motion of the National Labor Relations Board to file prehearing stipulation the time having expired and it appearing that the said stipulation of counsel pursuant to Rule 38(k) of the General Rules of this court has been lodged with the Clerk, it is

ORDERED that the stipulation be approved, and it is

FURTHER ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
EIGHTH REGION

In The Matter of: * 8-RC-5933

LUXAIRE, INC. *

(Formally The C. A. Olsen
Manufacturing Company) *

EMPLOYER *

AND *

UNITED STEELWORKERS OF
AMERICA, AFL-CIO *

PETITIONER *

Lorain County Court House
Elyria, Ohio
Tuesday, August 24, 1965

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

FRANK J. TUK, HEARING OFFICER.

APPEARANCES:

RICHARD A. STITH, Esq., 400 Lorain County
Bank Building, Elyria, Ohio, appearing on behalf of
the EMPLOYER.

MR. RON W. LINDSAY, President, Luxaire,
Inc., 2940 Stoney Ridge Road, Avon, Ohio, appearing
on behalf of the EMPLOYER.

MR. THEODORE W. O'DELL, Personnel Man-
ager, Luxaire, Inc., 241 Cambridge Avenue, Elyria,
Ohio, appearing on behalf of the EMPLOYER.

MELVIN S. SCHWARZWALD, Esq., METZEN-
BAUM, GAINES, SCHWARTZ, KRUPANSKY, FINLEY
& STERN, 700 Union Commerce Building, Cleveland,

14, Ohio, appearing on behalf of the PETITIONER.

MR. WILLIAM TAGGART, 614 Westgate Towers, Cleveland, Ohio 44116, Business Representative, appearing on behalf of the PETITIONER.

* * * * *

4 HEARING OFFICER TUK: The hearing will be in order.

* * * * *

5 It appears from the Board Order of July 23, 1965 that this hearing is being held for the purpose of taking evidence concerning:

* * * * *

Secondly, the issue raised by the Employer's objection to the conduct affecting the results of the election, more particularly the undated letter signed by William Taggart, representative of the United Steelworkers of America, AFL-CIO, and the fifth paragraph of that letter where it is stated:

"Is it any wonder that he has made some pretty rash statements in his letters to discourage you. Just so we set the record straight, the base rates of pay at the Medina Plant are higher than the rates at Olsen, and the standards are generally better because you see, we have a voice in setting them."

* * * * *

8 HEARING OFFICER: Do you have any comment or position as to the second issue?

9 MR. STITH: Yes. The company has filed objections within the appropriate time limit to the conduct on the part of the union. Specifically, in sending an undated letter to the employees containing a gross misrepresentation of a material fact concerning wages and production standards at a time when the company did not have an opportunity to reply. We contend, and will submit, that the objectionable paragraph, which was referred to in your opening statement, is untrue and unfairly influenced the outcome of the election by misleading the employees to believe

that the rates of pay and production standards at the Medina Plant, the Henry Furnace Company, were higher than that at the Elyria Plant which is now called Luxaire, Inc.

For these reasons, as we have requested, we ask that the Board set the election aside and order a new election so that all employees will be given an opportunity to vote free from the influence of any statement which might, as in this case, be calculated to mislead the employees on an important matter.

* * * * *

11

THEODORE W. O'DELL

* * * * *

DIRECT EXAMINATION

By Mr. Stith:

Q. Where are you employed, Mr. O'Dell?

A. Luxaire, Incorporated.

Q. That is in Elyria, Ohio. A. Yes, sir.

Q. How long have you worked for this employer?

A. Seventeen years.

Q. What is your present capacity with Luxaire?

A. Personnel Director.

Q. And how long have you held this position?

A. Approximately eight years.

Q. You were then personnel director on the date the petition was filed in this case? A. Yes.

Q. Are you familiar with all the events which transpired in relation to this petition? A. Yes, I am.

* * * * *

105

Lorain County Court House
Elyria, Ohio
Wednesday, August 25, 1965

* * * * *

106

THEODORE W. O'DELL

* * * * *

DIRECT EXAMINATION

107 By Mr. Stith:

Q. Mr. O'Dell, you testified yesterday that you have been employed by Luxaire for about approximately seventeen years? A. This is true.

Q. And as Personnel Manager for the last eight, is that correct? A. Yes.

Q. Were you in that capacity at the time the petition was filed in this matter? A. Yes, sir.

Q. Have you continued in that capacity since? A. Yes.

Q. Did the union conduct an election campaign at the plant after the petition was filed? A. Yes, sir, they did.

Q. Were you aware of anything that was done by the union with respect to that campaign? A. Yes, I was.

Q. Were there any communications directed to the employees? A. Yes. There were number — numerous letters which they received copies of.

(Company Exhibit No. 2
marked for identification.)

By Mr. Stith:

108 Q. I will hand you what I have marked for identification as Company Exhibit 2 and I will ask you to identify that and state its relationship to this case? A. This is the undated letter with the heading of United Steelworkers of America, to the hourly rated employees of C. A. Olsen Company, over the signature of William Taggart representative.

Q. To your knowledge when was this —

MR. STITH: Well, before we go on, I would like to move the admission of this letter, Company Exhibit 2.

HEARING OFFICER: Any objection?

MR. SCHWARZWALD: Yes, objection. I would like to either save examination on this point for later or examine Mr. O'Dell right now. I don't believe that the record is clear —

MR. STITH: What is the counsel's objection to this letter?

MR. SCHWARZWALD: The objection at this moment is that we do not as yet know how Mr. O'Dell happens to have this letter.

MR. STITH: All right, I will proceed with the examination and offer to introduce it later.

By Mr. Stith:

Q. To your knowledge when was this letter received by the employees? A. To the best of my
109 knowledge it must have been mailed on Tuesday or Wednesday, June 1st or 2nd, and received at the employees' homes on Wednesday or Thursday, June 2nd or 3rd.

Q. How do you reach that conclusion? A. On the morning of Friday, June 4th, the date of the election at approximately 9:00 o'clock a.m. in the morning one of our foremen, James Webb brought this letter to my attention, and said, "He received it from one of our employees." He stated, "That he had received it when he got home Thursday in the mail."

Q. Whose statement? A. Mr. Harry Grabenstetter, of — one of the employees.

Q. Now, referring to this Exhibit, Mr. O'Dell, what is the objectionable part as far as the company is concerned? A. It is the last paragraph on Page 1, which reads as follows:

"Is it any wonder that he has made some pretty rash statements in his letters to discourage you. Just so we set the record straight, the base rates of pay at the Medina Plant are higher than the rates at Olsen, and the standards are generally better because you see, we have a voice in setting them."

* * * * *

111 Q. Was this statement true? A. No, sir. In our opinion it was entirely untrue. It misrepresents the facts.

Q. Now, you said that it misrepresented the facts. Was any effort made by the company to counter this misrepresentation? A. At the late date that it was brought to our attention, the election had already started, so it was impossible for us to direct any letter to the employees' home or anything to correct this fact.

Q. It came to your attention you say on the day of the election? A. Yes, sir.

Q. At approximately what time? A. 9:00 o'clock a.m. June 4th.

Q. According to the schedule set up for the election voting, what had happened at that time? A. Well, the night shift, the third shift employees had already voted at 6:45 in the morning. So the election had actually already started when this came to our attention.

MR. STITH: I would like at this point then to move the admission of the letter.

112 HEARING OFFICER: Any objection, Mr. Schwarzwald?

MR. SCHWARZWALD: No objection.

HEARING OFFICER: The letter will be received.

(The above-referred to document, Company Exhibit No. 2, for identification, was received in evidence.)

HEARING OFFICER: I wonder if we might stipulate as to when the employees received this letter?

MR. SCHWARZWALD: No, we may not.

HEARING OFFICER: All right. Continue, Mr. Stith.

By Mr. Stith:

Q. Now, Mr. O'Dell, since a comparison was

made between two plants I would like to ask you some questions about this situation. Luxaire has a plant in Elyria, Ohio, is this correct? A. Yes, sir.

Q. Does it operate any other plant? A. Yes. We have a Division known as The Henry Furnace Company in Medina, Ohio.

Q. Are the employees of The Henry Furnace Company represented by any union? A. Yes. They are represented by the United Steelworkers of America and have been since Luxaire, Incorporated purchased the plant in 1943 and then known as the C. A. Olsen Company.

113

(Company Exhibit No. 3,
marked for identification.)

By Mr. Stith:

Q. I will hand you what I have marked as Company Exhibit 3, Mr. O'Dell, will you please identify that and state its relationship to the case? A. This is a form booklet which is the agreement between The Henry Furnace Company and Local No. 2195 United Steelworkers of America, AFL-CIO dated April 1, 1964.

Q. Is this the same union that petitioned for the bargaining rights at the Luxaire Plant in Elyria?

A. Yes, sir.

Q. Is this agreement still in force? A. Yes, sir. According to Article XIV on Page 37:

"The terms and conditions of this Agreement shall be made effective April 1, 1964, and shall continue in effect without modification or change . . . until midnight, March 31, 1966. . ."

Q. Does this agreement contain any specific reference to wage rates or production standards?

MR. SCHWARZWALD: Objection. The agreement will speak for itself.

MR. STITH: I think the witness can call the Hearing Officer's attention to the place where this is found

in the book. This is entirely proper. It is merely a convenience question.

114 HEARING OFFICER: Overruled. The witness can answer.

THE WITNESS: On Page 39, Appendix A, there is a Schedule of Classifications and Rates for Non-Incentive. On Page 40 for Incentive Classification. Also we have the effective date of the rates when they went into effect as April 1, 1964. The effective date of the new rates which went into effect on April 1, 1965.

Then on Page 34, under Article XII, heading, Wage Incentive Plan, there is a description of the method which production workers, the extra incentive pay is figured, the basis for the incentive system on it.

MR. STITH: I move the admission of this booklet, a copy of the collective bargaining agreement, as Company Exhibit Number 3.

HEARING OFFICER: Any objection?

MR. SCHWARZWALD: I am just checking.

HEARING OFFICER: Mr. O'Dell, you mentioned — I believe the question was directed to base rates or rate —

THE WITNESS: Yes.

HEARING OFFICER: — and you cite Article XII on Page 34. Where in that Article does it mention —

THE WITNESS: This is regarding production standards.

HEARING OFFICER: I see.

MR. SCHWARZWALD: No objection.

By Mr. Stith:

115 Q. Turning now, Mr. O'Dell, to the Elyria Plant of Luxaire, have there ever been any published rates or information on production standards at that plant?
A. Well, prior to May of 1965 the only method which there was, was notifying each new hire employee of

what his base rate of pay would be. Incentive standards have always been opened to the employees to question the authenticity.

MR. STITH: I move again that Company Exhibit number 3 be admitted, Mr. Hearing Officer.

HEARING OFFICER: Company Exhibit Number 3 is received into evidence.

(The document above-referred to, Company Exhibit No. 3, for identification, was received in evidence.)

By Mr. Stith:

Q. Have the rates for both groups of classifications, incentive and non-incentive, been increased over the years, Mr. O'Dell? A. Yes, many times.

Q. Now, how would an employee know at the Elyria Luxaire Plant that he was about to receive a raise or an increase? A. It has been the practice of the company over the years to post this notice of increase in rates on the bulletin boards thereby informing the employees of these increases. His method of figuring his increase was just by adding the increase amount to his present rate of pay.

(Company Exhibit No. 4, marked for identification.)

By Mr. Stith:

Q. I will hand you what is marked as Company Exhibit Number 4 and ask you to identify that if you will please and state its relationship to this case? A. This is a handbook produced and published by the company. It is entitled; You and Your Job at Olsen. This is distributed to our employees. It was distributed to our employees in May of 1965.

HEARING OFFICER: What part of May in 1965?

By Mr. Stith:

Q. Do you know the exact date that this was distributed to the employees? A. I am pretty certain

it was May 28th.

Q. Now, Mr. O'Dell, just briefly, what does this handbook contain without attempting to read it all of course, what does it cover? A. Well, it contains a pledge to the employees of fair treatment. Also it carries many articles regarding our benefit program, such as vacations, holidays, group insurance et cetera.

Q. Now, specifically with regard to wages, what information is given in the handbook? A. Beginning on Page 19 of the handbook and completed on Page 20 are the non-incentive and incentive classifications
117 and rates which go along with these classifications.

Q. Turning again for the moment to Company Exhibit 3 in relation to Company Exhibit 4, would that list of rates for incentive and non-incentive classifications in The Henry Furnace contract compare as to the type of work performed similarly to that in the handbook for the Luxaire Plant? A. Yes. In many instances they are the same job classification.

Q. But not in every instance? A. Not in every instance.

(Company Exhibit No. 5, marked for identification.)

MR. STITH: I move the admission of this Company Exhibit Number 4, if counsel has no objection.

HEARING OFFICER: Any objection?

MR. SCHWARZWALD: No objection.

HEARING OFFICER: Mr. O'Dell, I notice here in Company Exhibit 3, The Henry Furnace Company contract at Medina, on Page 39, you have a Three Months, Six Months and One Year Schedule there. When an employee is hired at what rate does he start.

THE WITNESS: I personally have nothing to do with the Medina setup as far as hourly paid employees. But as I understand that is their starting hiring rate.

HEARING OFFICER: Now, with respect to Exhibit 4, I notice you have a Hiring Rate, Three Months, Six Months and Twelve Months Rate?

118 THE WITNESS: Yes. All of our employees are hired at the stated Hiring Rate. Upon completion of probation period, which we discussed yesterday, three months, they go to this three months rate of pay.

HEARING OFFICER: So from their initial time of hire until they finish their ninety days they get — Millwright Class A for example get \$2.61 —

THE WITNESS: \$2.61.

HEARING OFFICER: — at the end of three months he would get \$2.66?

THE WITNESS: Yes, sir.

HEARING OFFICER: At the end of six months he would get \$2.71 and after the end of the year he would get \$2.82?

THE WITNESS: That is correct.

HEARING OFFICER: Is there a hiring rate for — I guess you are not qualified to testify on that, but if you know, is there a hiring rate at The Henry Furnace Company?

THE WITNESS: They use the three months rate. This I am sure of.

HEARING OFFICER: They use the three month rate for the hiring rate?

THE WITNESS: Yes.

HEARING OFFICER: Are these pay increases automatic?

THE WITNESS: At our plant?

119 HEARING OFFICER: Yes.

THE WITNESS: Luxaire?

HEARING OFFICER: Yes.

THE WITNESS: They are not automatic, no. I mean, as far as the particular time every year?

HEARING OFFICER: No, I mean —

THE WITNESS: As far as these rates in the book —

HEARING OFFICER: He gets hired at \$2.61 —

THE WITNESS: Once he has completed that probationary period satisfactorily then it is automatic from there on out, yes, sir. He automatically goes to the six months rate and he automatically goes to the twelve month rate.

HEARING OFFICER: So he gets hired at \$2.61 and he carries that rate for the first three months?

THE WITNESS: That is correct.

HEARING OFFICER: At the end of three months he is automatically increased to \$2.66 which he carries for the next three months?

THE WITNESS: That is correct.

HEARING OFFICER: Then at the end of that three months, or after he has six months of service he gets an automatic increase to \$2.71 which he carries for the following six months until he has one year of service and then he gets an automatic raise to \$2.82?

THE WITNESS: This is correct, sir.

120 HEARING OFFICER: Company Exhibit 4 will be received in evidence.

(The document above-referred to, Company Exhibit No. 4, was received in evidence.)

By Mr. Stith:

Q. Mr. O'Dell, I hand you what I have marked as Company Exhibit 5 and ask you to identify it and its relationship to this case? A. This is a Non-Incentive Base Rates Schedule which is a comparative figure for comparable jobs which are performed at the Luxaire, Incorporated Plant and The Henry Furnace

Plant in Medina. This, as is indicated on the sheet here, shows each classification, such as millwright A, at the three months rate at the Elyria Plant it is \$2.66, at The Henry Furnace Plant \$2.50.

For time sake I will just mention the top figures if it is all right.

Twelve month rate of millwright is \$2.82 at Elyria; at The Henry Furnace \$2.65.

Millwright B, C.A. Olsen, \$2.61; Henry Furnace \$2.55.

Electrician A, Elyria Plant, \$2.92; Henry Furnace \$2.65.

Electrician B, C.A. Olsen, \$2.71 —

MR. SCHWARZWALD: Objection. If we are going to have this whole thing read into evidence there won't be any issue as to its admissibility. I think there should be an issue. I thought the witness was going to
121 give one example where it is clear on its face what it is.

By Mr. Stith:

Q. Who prepared this Exhibit, Mr. O'Dell? A. I prepared this Exhibit from company records. It is very evident that in every instance these rates at the Elyria Plant are higher than those at the Medina Plant.

Q. With respect to what group, incentive or non-incentive? A. Non-incentive.

MR. STITH: I move for the admission of this Exhibit.

MR. SCHWARZWALD: Objection. I take it, first of all, this is derived from what is already in evidence and therefore it is unnecessary duplication. Beyond that it is highly prejudicial because it has a heading on it which is a heading put on there by whoever prepared this Exhibit, Mr. O'Dell I take it, and which is highly prejudicial on the main issue in this case. It should not be put into the record. Whatever information is contained here that is factual will be

derived from Company Exhibits 3 and 4. Nothing further should be put in on these points.

I move not only that this Exhibit be rejected but that the witness's testimony reading from this Exhibit be stricken from the record.

MR. STITH: Mr. Hearing Officer, may I say something on this point?

122 HEARING OFFICER: Certainly.

MR. STITH: I don't believe counsel for the union exceptions are well taken for the simple reason that although this does reflect the comparison between the published rates at The Henry Furnace Company and the Luxaire Elyria Plant there are other job classifications that are not covered by this and I would like to talk about some of those too by way of questioning. But I believe this Exhibit will be helpful in confining the attention of the Examiner to these differences that do exist.

Therefore, I ask that it be admitted. If the purpose of this investigation as I understand it is to ascertain the facts then this Exhibit will be a useful document in getting that information.

HEARING OFFICER: This Schedule, Company Exhibit 5 for identification is taken from the non-incentive schedules in Company Exhibits 3 and 4, is that correct, Mr. O'Dell?

THE WITNESS: Yes, sir, it is.

MR. STITH: I might suggest that it was done in the interest of making the comparison with a little more facility, having it on one document than having to jump from one Exhibit to the other.

HEARING OFFICER: There is a second column there which has number of employees, would you explain that?

THE WITNESS: It just got slid over a little too far there. That is supposed to be where you see the
123 3 and 1; 2 and 2; 2 and 1. This is the number of employees performing these duties at the Luxaire

Plant and also at The Henry Furnace Plant at the present time or at the time this Exhibit was made up, which was as of the date of the election.

MR. SCHWARZWALD: Mr. Hearing Officer, I might have further objection to this, particularly the part that you have already touched upon. The witness's explanation does not account for all of the contents of the Exhibit, for one.

Number two, the Exhibit looks to me in more of a nature of something for a brief, if counsel wants to prepare it and attach it. But it has no place as evidence in this hearing.

Number three, we do not know yet where these figures in the last column, from where they have been derived.

If you recall yesterday we had some major discrepancies between figures supposedly taken from the company records and the actual testimony given by the employees as to what the facts were.

All of these are additional grounds for objection to this Exhibit.

HEARING OFFICER: This non-incentive rate schedule, they are more fully set forth in Company Exhibits 3 and 4. This is only a partial listing, is that correct?

MR. STITH: I wish to point that out. Yes. I would like to ask a few more questions on it if I may.
124 This will help to clear up the admissibility.

HEARING OFFICER: Well, go ahead.

By Mr. Stith:

Q. Mr. O'Dell, although this point has been touched upon by the Hearing Officer, I note from this Exhibit that we marked as Number 5, there are rate adjustments at scheduled intervals, were there any employees on the date of the election working at Luxaire in Elyria who were receiving less than the twelve month rate? A. No. All employees complete one year of service and were at the maximum rate as stated in the classification schedule.

Q. Do you happen to know whether all of the employees at The Henry Furnace Company, Medina, were receiving maximum rate as of the date of the election? A. This I do not know.

Q. Are the increases from the three months to the twelve months rate automatically based on merit? A. After satisfactorily completing the three months period, ninety day probationary period, they are automatic from this point on up until the twelve months rate of pay.

Q. You stated earlier that this Exhibit has been limited to wage comparison of similar classifications, are there other non-incentive classifications at either plant not shown in this Exhibit? A. Yes. As indicated in Exhibits 3 and 4. For example, at the Luxaire Plant we have a Millwright C classification; at The Henry Furnace they do not.

We have Automotive Mechanic; they do not have this descriptive job.

They have a Sweeper Operator; we do not have this classification. So on down the line.

Sheet Metal Layout, we do not have anyone like this in our plant in Elyria.

Buffers, we do not have this classification in Elyria.

So it is strictly a comparison of comparable jobs only in the two plants.

Q. Then the Exhibit is intended to limit the comparison to those jobs where the responsibilities and duties are comparable, is this correct? A. This is correct.

MR. STITH: Again for that reason, Mr. Hearing Officer, we feel that this is important to the fact finding function of this hearing and ask that the Exhibit be admitted.

HEARING OFFICER: Well, inasmuch as it is a repetition, the same information is contained in Company Exhibits 3 and 4, I am going to reject this

Exhibit as well as Company Exhibit No. 1. If you desire, Mr. Stith, you may offer Company Exhibits 1 and 126 5 into the Rejected Exhibit File.

MR. STITH: Very well.

By Mr. Stith:

Q. Now, too —

HEARING OFFICER: Do you want to offer them into the Rejected Exhibit File?

MR. STITH: Yes. I will offer these Exhibits into the Rejected Exhibit File.

HEARING OFFICER: They will be received.

(The documents above-referred to, Company Exhibits No. 1 and 5, for identification, were received in the Rejected Exhibit File.)

(Company Exhibit No. 6, marked for identification.)

By Mr. Stith:

Q. To continue, Mr. O'Dell, I hand you what I have marked as Company Exhibit Number 6 and ask you to identify this Exhibit and state its relationship to the case? A. This is a comparative table made up of our incentive rates and classifications for week ending May 23, 1965.

Q. Who was it prepared by? A. This Exhibit was also prepared by myself from the company records.

Q. Let me ask you another question at this point. Is there any information concerning this data in either Company Exhibit 3 or Company Exhibit 4? A. Could 127 I have that question again please?

Q. Is there any information in this Exhibit that might be duplicated, is this a duplication of any information that will be found in Company Exhibit 3 or 4? A. No, sir, this is not.

Q. Go ahead with your explanation. A. All right. This is an average —

HEARING OFFICER: You already described the Exhibit, have you not?

MR. STITH: This is non-incentive. We are merely pointing out what it is.

THE WITNESS: Incentive.

MR. STITH: Incentive, pardon me. You think that it will speak for itself?

HEARING OFFICER: Mr. Schwarzwald, do you have any questions on this-Exhibit? I assume that you are going to offer it in evidence, Mr. Stith?

MR. STITH: Yes.

HEARING OFFICER: Do you have any questions on the admissibility of this document?

MR. SCHWARZWALD: Yes.

MR. STITH: Perhaps he would be better informed if I changed my question on the Exhibit, Mr. Tuk.

HEARING OFFICER: All right, go ahead.

128 By Mr. Stith:

Q. Does this Exhibit represent a direct comparison of all incentive classifications at both plants?

A. No. As indicated in previous testimony there are certain classifications which are not comparable. This is only classifications which are comparable with The Henry Furnace job classifications.

Q. I would like to direct your attention to Company Exhibit Number 4, Page 20, if I may. On Company Exhibit Number 4, Page 20, published rates for incentive classifications are set forth there, the same that are shown for those classifications in Company Exhibit Number 6, which has not been admitted as yet, but in all but three instances, Trucker, Tow Motor and Welder, the handbook rates are lower than that shown in Exhibit 6, would you please explain this difference? A. Well, it is due to the fact that the handbook does not reflect the wage status of Elyria where

the employees enjoyed the six cents second shift add-on rate, and the third shift twelve cents add-on rate, which is prior to their wages being calculated daily. This six and twelve cents figure is added to their base pay, and their incentive earnings reflect this figure.

With the second shift and third shift employees there is an over-all average and the base pay does come up to this figure in here, as stated in here. At 129 the Medina Plant they have a second shift figure of five cents per hour added to their pay, and ten cents per hour for third shift employees. This figure though is not used in the calculation of incentive earnings. It is strictly an add-on. Such as an employee working on the second shift, eight hours, five cents per hour, he has forty cents per day added to his wages. Third shift has eighty cents for his ten cents per hour added to his wages.

Q. So then the Elyria situation, you said add-on, is this a shift bonus at Elyria — A. This is a shift differential? I thought I stated that.

Q. — of six — A. Six cents for the first shift and twelve cents for the third shift.

Q. This is added — A. This is added to the base rate prior to the incentive calculation of their pay being made daily. Therefore, this would make their daily earning of a higher nature. And it is clearly indicated here that the over-all average of hourly earnings are much higher at the Luxaire Plant than they are at The Henry Furnace.

Q. Now, specifically with reference to Luxaire Elyria, how many employees were working on the second or third shift as of the day of the election?

130 A. Approximately thirty-three.

HEARING OFFICER: You say thirty-three incentive?

THE WITNESS: On second and third shift.

By Mr. Stith:

Q. These were employed on incentive at Elyria?

A. Yes.

HEARING OFFICER: Do you know how many were on the second shift?

THE WITNESS: I would say twenty-two.

HEARING OFFICER: How many on the third?

THE WITNESS: Eleven.

MR. STITH: Now, with those additional questions and answers, Mr. Hearing Officer, I again move the admission of Exhibit Number 6. It is taken from the company records and was prepared by Mr. O'Dell. There is no other source of information that we can submit that will enable us to make the comparison except in this manner. We ask that it be admitted as additional facts that the Hearing Officer would have to have to make a ruling on this case.

MR. SCHWARZWALD: I object to the Exhibit. Once again it contains a highly prejudicial heading which does not appear with reference to figures of this type or derived in this way either in Company Exhibit 3 or Company Exhibit 4. Of course, referring to the heading "AVG. Base" which appears twice in
131 Company Exhibit 6.

In addition, obviously the calculations contained in this sheet are of great importance to this hearing. These figures will be extremely germane. This summary presentation of what must be a vast series of company records I don't think is really adequate or fair at this point. In the light of the difficulties we have had with the accuracy of company records and the testimony in this hearing to date —

HEARING OFFICER: Just confine your remarks to this particular Exhibit, will you please?

MR. STITH: Well, Mr. Hearing Officer, if I may speak further on this point.

There is one part of Mr. Schwarzwald's statement that is correct. And that is for the company to bring before this Hearing Officer a complete compilation of all of the incentive earnings of comparable classifications between the two plants as of the date

of the election would probably fill part of the room here. We would be examining here until Christmas.

This Exhibit, as the witness indicated, is indicative of both average base rate and earnings received by these incentive classifications which were comparable at the two plants.

Now, the statement was made in the letter over which the objection was raised, on these very points.

132 If the company is not permitted to show in this manner what the comparisons may be then we have no way that it can be done. This is both an efficient and accurate way. It is a fair, more than a fair sampling of the types of jobs that are comparable at the two plants on these points. The earnings as reflected by the Exhibit are taken precisely from the company records as of that time. Only in this way can we get before the Hearing Officer the facts with relation to the comparison that was made in the letter about which of course the company has objected.

HEARING OFFICER: Well —

MR. SCHWARZWALD: I might point out further, Mr. Hearing Officer, just briefly checking this Exhibit. As I understand the testimony to date there is some discrepancy regarding the Medina employees in what is called AVG Base, Machine Operator "A" and Machine Operator "B". What is stated there is not stated in the contract. That is one discrepancy. That should be copied from the contract.

THE WITNESS: I thought that I made it very clear that this reflected the second and third shift employee averages also, which would increase his over-all figure.

MR. STITH: That is right. The shift differential is included. That is not shown in the published rates, the published base rates, but it is earnings.

133 MR. SCHWARZWALD: May I be heard further on that?

HEARING OFFICER: Yes.

MR. SCHWARZWALD: As I understand the testimony that was supposed to be the policy of Elyria and not at Medina.

By Mr. Stith:

Q. Would you answer that? A. I said they had a five cents add-on which is added on after calculation of the incentive earnings at the Medina Plant. Five cents on second shift and ten cents if they have a third shift going.

Q. Then to arrive at the average base for Medina that was included, the forty and the eighty? A. That would include that, yes. Even though it is not considered when they calculate their incentive earnings.

HEARING OFFICER: Would these figures still be true if you did not add the shift differential at both of these plants?

THE WITNESS: No, sir.

MR. STITH: May I ask a question?

HEARING OFFICER: Yes.

By Mr. Stith:

Q. Mr. O'Dell, what does the company consider these bonus payments, are there any exceptions in the adding at Medina or the adding at Elyria? A. No, there are no exceptions to this rule. This is added to
134 every man's second shift and third shift base pay before his incentive earnings are calculated daily.

Q. So in order to arrive at an average base rate for incentive these amounts had to be used? A. Yes.

MR. SCHWARZWALD: May I point out one further thing, Mr. Hearing Officer. These figures are derived from company records which were not available to the union at the time Company Exhibit 2 was composed. They were not available to anybody except the company officials. They were not available to the employees at either plant. Upon this sort of information I don't think the Petitioner could be charged with making misrepresentations based upon evidence

that they could not possibly have. Evidence that does not appear, evidence that was not known to the employees or anyone from whom the Petitioner might be able to get information.

THE WITNESS: The handbook had been sent out.

HEARING OFFICER: We are getting into argument now.

MR. STITH: May I answer that? May I answer that, Mr. Hearing Officer?

HEARING OFFICER: Go ahead.

MR. STITH: This is precisely the reason why the company objected to the statement in the union's letter. It was particularly objectionable because the Steelworkers, as the testimony has shown, have represented the employees at The Henry Furnace Plant and
135 their statement consequently would carry a great deal of significance to the Elyria employees rather than just a public statement as it sometimes appears in these campaigns.

MR. SCHWARZWALD: Just to continue, Mr. Hearing Officer. Once again some -- according to the testimony that we have from Mr. O'Dell, some of the information which is contained in the figures for Medina would not be available to the union even as the bargaining representative at that plant. Would not be available to it, would not be required to be presented to it by the company under Board Law. It could in no way be known.

MR. STITH: All the more reason for the damaging nature of the irresponsible statement in the letter.

HEARING OFFICER: That is enough argument. These average base rates, were they for the end of one year?

THE WITNESS: No, sir. They are a one week period, May 23rd.

HEARING OFFICER: I mean the hourly rate, is

that rate of pay that one of the employees in these classifications would receive at the end of one year's employment?

THE WITNESS: Yes, sir. The non-incentive base schedule is entirely relevant to this case.

HEARING OFFICER: Off the record.

136 (Discussion was had off the record.)

HEARING OFFICER: On the record. You are offering Company Exhibit 6, Mr. Stith?

MR. STITH: Yes.

HEARING OFFICER: Subject to the qualifications and explanation of the witness of Company Exhibit 6, I will receive it into evidence.

* * * * *

By Mr. Stith:

Q. Now, Mr. O'Dell, we have been talking about the incentive classifications, what are the jobs on which incentive earnings are received that are similar in both plants? A. Jobs on this particular sheet are similar.

Q. I want to differentiate between jobs and classifications? A. Jobs are not similar, no.

Q. What is a job as you understand contrasted with a classification? A. Well, as far as the working conditions and jigs and fixtures and things of that nature they could be different in both plants, yes.

Q. Would a job be an order number or something like this? A. Oh, yes. There would be no similarity there. They make an entirely different product, different models I should say.

137

(Company Exhibit No. 7
marked for identification.)

By Mr. Stith:

Q. I will hand you what I have marked as Company Exhibit 7 —

MR. STITH: This is our last Exhibit.

By Mr. Stith:

Q. I ask you to explain that and its relationship to the case? First of all, did you prepare this Exhibit? A. Yes, sir.

Q. How was it — A. I had this Exhibit prepared.

Q. You had this Exhibit prepared? A. Yes.

Q. Who got this information? A. I had — our Time Study Engineer received this information.

Q. What does this purport to show? A. Well, the only thing he could come up with as far as comparable jobs at the Medina Plant and the Luxaire Plant in Elyria was the following welding jobs, which are four. 3-tube, 4-tube, 5-tube and 6-tube welding jobs. The rates for these particular jobs, incentive rates, are as indicated on this sheet at the Elyria Plant. In case of 3-tube 14.220, Medina 11.605
138 and so on down the sheet, which in our opinion indicates that the rates in the Elyria Plant in this particular instance are much better in incentive value.

Q. Now, these incentive values you place in terms of minutes? A. Yes, sir.

Q. Now, of course, as you have stated there must be hundreds of jobs at both plants other than those contained in this Exhibit? A. That is correct.

Q. Why again does this Exhibit confine these illustrations to these few? A. Well, as I mentioned before these are the only jobs we could find that are complete comparable jobs between the Medina Plant and the Elyria Plant.

Q. By comparable you mean they are performed under similar conditions? A. That is correct.

Q. Are the functions the same? A. To my knowledge they are, yes, sir.

Q. Now, going back a big, Mr. O'Dell, I want to direct your attention to Company Exhibit Number 3 and 4 with respect to non-incentive classifications. I believe your published rates in your handbook are on page 20, and in the Company Exhibit Number 3, The Henry Furnace contract, they appear at page 39, is
 139 that correct? A. Yes, sir.

Q. Now, what is a summary comparison of the non-incentive rates, hourly rates, without any influence of incentive earnings on those two Exhibits?

A. Well, there are jobs listed here which are not similar. Therefore, we made no comparison on them. Such as in Elyria we have Repair Welder-Cleaner and a Cleaner and an Arc Welder "B", Spot Welder therefore there were no comparative rates on these particular jobs, no comparable jobs.

Q. Using the two Exhibits in comparable jobs, what is the result on non-incentive classifications?

A. On non-incentive?

Q. On non-incentive? A. On non-incentive? Excuse me.

Q. I said non-incentive. A. I thought you said incentive. In non-incentive we are in every instance at a higher rate definitely in all classifications.

Q. Now, then at the time of the election, Mr. O'Dell, how many employees at the Elyria Plant were on non-incentive classifications? A. At the time of the election approximately twenty-eight percent of the employees, or 57 employees, were classified as non-incentive employees.

140 Q. So 57 employees at the Elyria Plant were then receiving higher non-incentive rates than comparable jobs at The Henry Furnace? A. This is correct.

Q. Is that correct? A. Yes.

HEARING OFFICER: You say 57 employees were classified as non-incentive, is that correct?

THE WITNESS: Yes, sir.

HEARING OFFICER: How many in fact were non-incentive?

THE WITNESS: The only additional employees that we would have would be your supervision and guards.

HEARING OFFICER: So that at least 57 employees would have been non-incentive employees at this time?

THE WITNESS: Let me rephrase this please. 31 employees were in this comparable chart which was made up, the Exhibit that was taken out, and the balance of the employees are on non-incentive but they are not comparable jobs so they are not listed.

HEARING OFFICER: On Rejected Company Exhibit Number 5 you are saying there are 31 employees —

THE WITNESS: I don't have it in front of me, sir. I believe there were 31 employees on it.

HEARING OFFICER: There are 31 employees on the non-incentive classification and were working as non-incentive employees at the time of the elec-
141 tion and these 31 had comparable jobs where there were comparable non-incentive jobs at the Medina Plant at this time?

THE WITNESS: That is correct, sir.

HEARING OFFICER: Now, you say there are another what, 26?

THE WITNESS: 26.

HEARING OFFICER: For which there are not comparable non-incentive jobs at the Medina Plant?

THE WITNESS: That is correct.

142

* * * * *

(The document above-referred to, Company Exhibit No. 7, for identification, was received in evidence.)

* * * * *

145

CROSS-EXAMINATION

By Mr. Schwarzwald:

Q. Mr. O'Dell, what year was it that Olsen Manufacturing, Luxaire purchased The Henry Furnace Company? A. 1943.

Q. If I understand your testimony yesterday and today, upon being hired an employee is told what his rate is, is that correct? A. That is correct.

Q. Classification in which he is hired?

A. Classification and the hiring rate, yes, sir.

Q. And is he told of increases in his rate, what they will be? A. He is told at the time of hiring
146 what the rates are that will go along with the jobs, yes. Three months, six months, twelve months rate of pay. So he knows in twelve months that he is getting the top rate.

Q. And prior to the publication of Company Exhibit 4, was he given anything in writing? A. No, sir, he was not.

Q. Then I believe you testified that prior to Company Exhibit 4 that any changes in the rate of pay are posted on a bulletin board, is that right? A. This is correct. When there are general increases.

Q. When there are general increases? A. Yes.

Q. Were there any increases other than general in the eight years since you have been Personnel Director? A. No, sir, not to my knowledge.

Q. So then there is a statement put on the bulletin board that says all employees' wages are raised so many cents? A. That is correct. Effective such and such a date.

Q. Effective such and such a date. And there is no listing of job classifications or wage rates for each classification? A. It is stated as incentive classifications three cents an hour and non-incentive six cents per hour.

147 Q. That is the way the notices read? A. Yes.

Q. Then turning to Company Exhibit 4, you testified that it was put out approximately May 28th, is that correct? A. That is correct.

MR. SCHWARZWALD: Please mark this as Petitioner's Exhibit 1?

(The document above-referred to, Petitioner's Exhibit No. 1, was marked for identification.)

By Mr. Schwarzwald:

Q. Mr. O'Dell, I am showing you what has been marked for identification as Petitioner's Exhibit Number 1, can you tell us what that is a photostat copy of? A. It is evidently a letter from Mr. Lindsay regarding the handbook which was distributed on May 28th.

Q. You are now saying it was distributed on May 28th, is that because of the date appearing — A. No. I made the statement before of May 28th when you asked me.

Q. Now, you are certain that it was distributed on May the 28th? A. Yes.

Q. You were saying approximately? A. Yes. I thought that I made that clear.

Q. I didn't understand that. Thank you.

148 HEARING OFFICER: What is your testimony, that it was handed out on May the 28th, 1965?

THE WITNESS: Yes, sir. If I didn't make the statement before this is correct.

* * * * *

151 MR. SCHWARZWALD: I understand that it would be proper to propose a stipulation at this time regarding Petitioner's Exhibits 2, 3, 4, 5 and 6. That without regard to the ink markings on these Exhibits, other than the Reporter's official mark, that these Exhibits are in fact photostat copies of letters which

were sent to the employees by the company over Mr. Lindsay's signature on the dates which are indicated on each of the Exhibits.

MR. STITH: I so stipulate.

HEARING OFFICER: The stipulation is received.

MR. SCHWARZWALD: Then I offer these into evidence.

HEARING OFFICER: Petitioner's Exhibits 2, 3, 4, 5 and 6 are received in evidence.

* * * * *

152 By Mr. Schwarzwald:

Q. Mr. O'Dell, I take it you are familiar with the production processes at the Elyria Plant, is that correct? A. Regarding what basis?

Q. Well, you are familiar with the product and the way it is made, products and in the general way in which they are manufactured? A. As much as any Personnel Manager would be I suppose, yes.

Q. Could you describe these for us, what products are made at the Elyria Plant? A. Yes. Gas fired heating units; infrared heaters; air-conditioning et cetera.

Q. Gas fired heating units? A. Yes. I mentioned that first I believe.

Q. You say heating units, you mean what we laymen normally call furnaces? A. Furnaces, yes.

Q. Thank you. And cooling equipment is air-conditioning and refrigerator equipment or is it all air-conditioning? A. Strictly air-conditioning.

Q. Now, are you familiar at all what is produced at The Henry Furnace Company in Medina? A. Not officially, no, sir.

Q. You don't know what they make? A. I have some idea. They make unit heaters, things of this
153 nature.

Q. Do you know if they make products along the same lines or in anyway similar to the products made in Elyria? A. Similar only to the extent that they are gas fired heating furnaces. But they are different model than what we make in the Elyria Plant. We do not make the same models and units in the same plant. They do not make —

Q. They have different model numbers?

A. That is correct. Different models entirely. Plus the fact they do not make any air-conditioning units at all. That is all made in the Elyria Plant.

Q. You are saying particularly in relation to gas furnaces that they are completely different? A. That is correct.

Q. They are in no way interchangeable? A. I'm not an authority on these things.

Q. Coming to Company's Exhibit 7, you testified that this was prepared for you? A. That is correct.

Q. By whom? A. Dick Minnich our Time Study Engineer at the Elyria Plant.

Q. Did you direct him to prepare it? A. Yes. I asked him to search our records for comparable rates.

154 Q. Now, by search your records, what do you mean, which records? A. The company records at the Luxaire Plant in comparison with the company records at The Henry Furnace Company Plant with their Time Study Engineer.

Q. Now, could you tell us again what 3-tube, 4-tube, 5-tube and 6-tube means on this Exhibit?

A. I don't think I told you in the first place.

Q. Why don't you tell us? A. I am not that familiar with it. That is what I tried to explain. These are welding components, they are welding jobs, welding of a 3-tube sectional heating unit, 4-tube sectional heating unit. These are the guts of the furnace — excuse the expression — this is the time that a man gets to weld these sections up. This is

similar operations.

Q. So Mr. Minnich told you? A. That is correct.

Q. You have no knowledge as to that of your own? A. That is correct.

Q. Mr. Minnich prepared this entirely and handed it to you? A. That is correct.

MR. SCHWARZWALD: Mr. Hearing Officer, I am going to move that this Exhibit be stricken from the record based upon this testimony.

155 MR. STITH: It has already been admitted, Mr. Hearing Officer. I don't think the questions that were developed in any way weaken its validity in the application to the case. As prior testimony reveals this Exhibit concerns only four jobs that are comparable. To that extent your comment was that you would receive it to the extent that it would be applicable to Company Exhibit Number 6, the prior one on the incentive classifications.

MR. SCHWARZWALD: Mr. Hearing Officer, perhaps I misunderstood the earlier testimony. It was my impression, until I asked this series of questions, that this witness was personally familiar with what was involved in this Exhibit or, that someone else had prepared it for him in a statistical fashion. Someone like a secretary had gotten the information or put it together. That he was familiar with it, that he understood it, that he knew what he meant. Now, that was my impression —

THE WITNESS: I did not make that statement, sir, in my testimony.

MR. SCHWARZWALD: If you will let me finish. There is no question before you.

THE WITNESS: You are questioning my testimony.

HEARING OFFICER: Please let us not have any interchange of conversation between witness and counsel. If you have any remarks direct them to me.

156 Mr. O'Dell, is it your testimony now that you were not familiar with the facts that are set forth or the statement that is set forth on Company Exhibit Number 7?

THE WITNESS: That is correct. I know what the heading of the Exhibit says, Comparison of Weld Assembly. I am not a statistician on welding, the job of welding.

HEARING OFFICER: Who prepared this?

THE WITNESS: Richard Minnich.

HEARING OFFICER: Richard Minnich —

THE WITNESS: Time Study Engineer.

HEARING OFFICER: I think Mr. Minnich would be the proper person then, in view of the witness' present testimony, Mr. Minnich would be the proper person to testify as to this Exhibit. For that reason I expect that the company will put Mr. Minnich on to identify this Exhibit this afternoon.

MR. STITH: That is part of our case-in-chief. I don't know if I could promise it today or not. I have no idea where he is or what he is doing at the moment. But we will certainly check into it. It is your intention then to hold it until you have heard Mr. Minnich's testimony in terms of Mr. Schwarzwald's request that it be rejected?

HEARING OFFICER: In view of the witness's testimony I think I have no other alternative than to now reject the Exhibit and hold it pending Mr. Minnich's testimony. If it is offered at that time or re-
157 offered at that time, why, I will make a ruling on it. Company Exhibit Number 7 is rejected at this time.

(Company Exhibit No. 7 removed from evidence and placed in the Rejected Exhibit File.)

MR. STITH: Now, if it is proper at this particular time, in view of counsel's position with regard to

these Exhibits, as you notice the company was willing to stipulate that all of these letters that he had submitted, letters sent out over Mr. Lindsay's signature, now, I would like to enter an objection to that at this point because it is not germane to this case. Those letters are not germane to this case. The Union filed no objection to this election. Consequently, these letters have no bearing on this matter. The only single question in the second issue is whether or not the undated letter, which was Company Exhibit Number 2, was of such a nature as to constitute grounds for setting aside the election and ordering another one. So I would like to move that they be rejected.

MR. SCHWARZWALD: Mr. Hearing Officer, I think — I don't know if it was intentional or not, but there is some implication here as to fair treatment which I think ought to be clarified. I did enter an objection of course to Company Exhibit Number 7 when Exhibit Number 7 was initially presented. That Exhibit was received over my objection. Further testimony clarified it. You have ruled on more adequate
158 grounds and different grounds for the objection.

There is another substantial difference of course as to the letters. There is no change or anything about those. Where these company exhibits are things derived from the company records and have a totally different setting in this record.

I was in no way attempting to sandbag or create any problems. As far as counsel is concerned, I only thought we could get the letters in because obviously they will come in one way or the other. They were sent, they exist. The materiality I assure you will be shown through this witness and other witnesses throughout this hearing.

MR. STITH: Without attempting to argue the point, Mr. Hearing Officer, there were at least two references made by counsel concerning the inaccuracy of company records. On one point you questioned him on this very thing. Outside of one date that a witness could not recall yesterday everything else was corroborated as far as the company's

position was concerned.

Now, as far as I am concerned I would like to have the record show that I withdraw my agreement to the stipulation and enter an objection to the admission of those letters as not being pertinent or relevant to this case. The Union did not file any objections during the five day period allowed for this thing.

159 They have no bearing on this matter.

HEARING OFFICER: Mr. Schwarzwald, do these Exhibits, namely Petitioner's Exhibit 2, 3, 4, 5 and 6 go to your defense as to the second issue in this case?

MR. SCHWARZWALD: Yes.

HEARING OFFICER: I will overrule your objection, Mr. Stith, and reaffirm my ruling that they will be admitted into evidence. But I will attach this one condition. That Petitioner's counsel make a connection between these Exhibits and his defense through a competent witness.

MR. STITH: I would like to reserve the right to move again at the conclusion of the entire matter.

HEARING OFFICER: You have that right.

By Mr. Schwarzwald:

Q. Mr. O'Dell, now, showing you Company Exhibit Number 6, the first column, the heading Elyria and Medina, AVG. BASE. Now, will you tell us what AVG stands for? A. As indicated previously this is the average base rate including shift premium for the week ending May 23rd for all employees in these categories.

Q. Now, I am not sure how much of that discussion is in the record. Would you repeat to make sure that we have it clear, how they rate, what you have called average base, is that correct? A. Yes.

160 Q. Average base rate, how that is derived —
A. We have —

Q. — in as much detail as you can? A. Well, first, we have 28 employees which we show — let's

take Machine Operator "A". We show 28 employees in the Elyria Plant as Machine Operator "A" for week ending May 23rd. I personally took from the company records all 28 employees base rate of pay including shift premium, as I indicated earlier.

Q. Could you stop at that point and explain that for us please, what you mean by including shift premium? A. Yes. This is six cents per hour for the second shift employees; twelve cents per hour for all employees on the third shift in this classification of work.

Q. When you say second and third shift now you mean employees who during the week ending May 23rd 1965 were working on the second and third shift? A. Including first, second and third, yes.

Q. All right, go ahead. A. Totalled the base wages of all employees, divided by the number of employees, came up with the figure of \$1.594 per hour as an average. The same in the Machine Operator "B"
161 and so on down the line.

Q. Any overtime pay enter into this calculation? A. Not at all. Overtime was excluded from all figures.

Q. Your company does pay overtime, does it not? A. Certainly do.

Q. Am I correct in saying you pay overtime for all hours worked over 40 a week or 8 a day? A. This is correct.

Q. You pay at the rate of time and a half? A. Correct.

Q. Now, do you recall that no employee received any overtime during these weeks? A. I wouldn't know right offhand. But I am certain that it was excluded from all of my figures.

Q. Well, if a person did work overtime, what did you take, you just added another hour? A. No.

Q. Of their base? A. I took an actual week's payroll and had the man's pay right in front of me

which was broken down into base pay, premium pay, overtime pay and total pay. I took the total pay figure, subtracted the overtime figure, divided this figure by the total hours worked which gives you — that was the only way to figure any average. You never include overtime pay in averages.

162 Q. Now, those classifications you gave us, base pay, that is the base rate of pay? A. That is correct.

Q. Then there is premium pay? A. Shift premium. Oh, you are talking about the computation, yes.

Q. These are labels that you used that I want to get. A. Base pay, premium pay, overtime pay and total pay.

Q. Those are the four classifications you used? A. Yes.

Q. Now, could you explain to us what appears in each of those, what appears in base pay? A. Well, base pay \$1.59, \$1.575 let's say for Machine Operator would be around \$63; premium pay might be \$50 a week, and if he had any overtime that figure would be there. All of this is totalled together to come out with the gross pay figure.

Q. Then the premium category would include the shift premium? A. No, sir, it would not. Oh, it would, the same as it would in your over-all wages, yes.

Q. I mean on your categories this is where it would appear, is that correct, premium pay is shift premium, is it not? A. No, sir, it is not.

163 Q. What is premium pay? A. It would be included in your base pay.

Q. You are not answering my question, Mr. O'Dell. A. You said would it be included in premium pay and I said no. It would be included in your base pay.

Q. What is included in premium pay? A. Premium pay?

Q. Yes. A. This is strictly your incentive system. All over 480 minutes daily is incentive. First 480 minutes a day a man earns base pay only. After that he earns what we call premium pay. This gives you your total earnings for each day of the week. But his pay, his base pay, each individual — let's say on the second shift who has \$1.575 rate per hour plus six cents, the base pay figure will show it as \$1.635. That will show in the base rate column that I had reference to.

Q. I understood your previous testimony that column contains the total, does it contain hourly rates? A. It contains the total of base pay, yes, sir. For the week I am speaking of, not daily.

Q. Now, is some work done at your plant, jobs that will be timed and put on incentive basis, where they are produced before they are timed? A. Certainly.

164 Q. What is the policy for pay for those jobs?

A. We have a method whereby we add 50 per cent of the man's incentive rate and it is added to his daily pay, his hourly pay, excuse me. 50 per cent of base pay figure per hour is added to his wages.

Q. 50 per cent of his base rate of pay? A. That is correct.

Q. Is added? A. Yes.

Q. Now, how long has that program of pay, that system of pay for this sort of work been in? A. I couldn't say exactly, sir.

Q. If I were to show you Petitioner's Exhibit 4, the last paragraph of which says in part:

"... As you know, the day rate for incentive employees was increased from 50 cents over incentive to 50 per cent over incentive on January 18. . ."

Would you then say that was the effective date of that

change? A. Well, I didn't write this letter so I wouldn't know. But I would say that this is probably correct.

Q. Now, the classifications that were selected for Company Exhibit 6, they were selected on the basis of similarity of type between Company Exhibit 3 and Company Exhibit 4? A. This is correct.

165 Q. Are you personally familiar with the actual work content of any of these jobs? A. No. But I know what a tow motor operator does and a packer does.

Q. When you say you know, you know in general or do you know what these specific employees in these specific categories do in both Elyria and Medina Plants? A. As far as these comparable jobs I know what they do.

Q. You are assuming the question, sir. Do you of your own knowledge know everything that the tow motor operator at the Medina Plant does? A. No, I do not.

Q. Do you of your own knowledge know everything that a packer in the Medina Plant does? A. No, I do not.

Q. Do you know of your own knowledge everything that a tow motor operator does in the Elyria Plant. A. Certainly.

Q. You do know the job content of each and every one of the classifications in use at the Elyria Plant, is that your testimony? A. That is correct. As far as what their job duties would be, job assignment.

Q. Now, Exhibit Number 6 refers to an Arc Welder, Company Exhibit 4, I am now showing you page 20, first for an Arc Welder "A" and then an Arc Welder "B", do you know which one was used in making the computations on Exhibit 6? A. Arc Welder "A" because I have no Arc Welder "B".

Q. You have none working? A. None at all.

Q. Do you know what other classifications in the bottom part of page 20 you do not have any employees in? A. Presently Checker. I do not have any.

Q. No Checkers. Let's talk about the time of the election June 4th, do you know about that? A. We made a changeover on Checker. This I would not be sure of the date of this changeover. I would say that it was after the election — well, it definitely was because I still show it on Exhibit 6.

Q. I remind you, sir, Exhibit 6 was prepared for the week ending May 23rd? A. That is correct. So the Checker was still in the plant.

Q. Which was two weeks before the election?
A. Right.

Q. This was prepared for that week, right?
A. That is correct.

Q. Does that necessarily reflect the complement of employees in jobs on the date of the election?
167 A. Not necessarily correct.

Q. Could be changes between May 23rd and June 4th? A. Certainly. Just as indicated yesterday on the recall of employees.

Q. Do you know then on June 4th which classifications you had as to employees, do you know some of them that you did not have employees in? A. I know those that I didn't have employees in, yes.

Q. I will accept that. A. All right. I didn't have any Arc Welder "B".

Q. All right. A. That would be the extent of it.

Q. You had employees in every one of these other classifications on June 4th? A. That is correct.

Q. You are now sure that Checkers were taken off after that date? A. That is correct. That is, they are still in my computation of figures. I know it was after June 4th, yes.

Q. Mr. O'Dell, once again, this Company Exhibit 6 is based upon week ending May 23, 1965, is that your testimony? A. Yes. You keep referring to the date the voting, the date of the election.

Q. Which is two weeks later? A. Yes.

168 Q. You have already told us that it could be later changes in that two week period? A. Correct.

Q. I am now asking you about the situation on June the 4th? A. It is the same.

Q. Now, no changes between May 23rd and June the 4th? A. That is correct.

Q. Regarding the categories where you do not have any employees in them? A. That is correct. There was no Arc Welder "B" two weeks later et cetera and there were Checkers. This would remain intact. As far as the number of employees this definitely could change and I am sure that it did during this period, all classifications will change.

Q. What about the classifications that were for non-incentive workers on page 19 and 20 of Company Exhibit 4? A. I don't have that Exhibit.

Q. The one right here that I just handed you. These classifications starting in the middle of page 19 and running over to the middle of page 20, which of those classifications you had no employees on June 4th? I take it for this purpose — A. I do not —

Q. — is it fair — let me put you straight first. Is it fair to take the week ending June 4th, unlikely
169 that you would have anyone coming in in the middle of the week? A. No. This could happen. We could have them coming in in the middle of the week. Someone coming in.

Q. Do you know if any one came in? A. I don't have the original Exhibit in front of me so I don't even know what classifications I turned in during that particular week. I certainly can't sit here and say that I know I had none of these classifications and I had some of these. I don't have the Exhibit.

Q. Are you in control of the company records that would indicate that? A. Yes, sir.

Q. Which classifications you had employees in and which classifications you did not? A. Definitely.

Q. Do you have these records with you in the room? A. No, sir. It is impossible to bring all records.

Q. I am talking about the week ending June 4th, you don't have them? A. I don't have them here, no. That is correct.

Q. They could be obtained I take it? A. It would take research naturally. The reason I say this, during this period when we are picking up in our employment I may have people stopping over as a sweeper prior to going back into assembly work. Something
170 like this. So we are adding changes constantly at this time.

Q. Well, sir, the payroll for the week ending June 4th, doesn't that payroll, does that payroll have classification indications on it? A. Not at all.

Q. No classifications? A. No, sir, not on the payroll. It just has the name, clock number, hours worked, and pay period.

Q. Don't you have any sort, any run or tabulation of classifications? A. I have a personnel file naturally on each and every employee. I also institute all changes in the employee's classification. This would be the only method. That is why I said it would take research to find out who was doing what that particular week. A man could have changed once or twice since that time. So I would have to go through every card, personnel record card, and determine who was doing what in what particular week in question.

Q. I take it from your testimony you have made no such search today? A. Not on the date of the election, no, sir.

Q. To this day, right now, have you made any search, such search of the records, until this date August 25, 1965, have you any search of the records to obtain this type of information?

171 MR. STITH: I object. I don't know what this has to do with it. There might be some pertinence as to the election or on May 23rd, but what August 25th has to do with it I fail to see the tie in there.

HEARING OFFICER: Overruled. Did you make a search?

THE WITNESS: On the Exhibit that had been thrown out I had made a search certainly. That is my only way of getting information together.

By Mr. Schwarzwald:

Q. Did that search reveal in which categories there were no employees? A. Certainly. On my Exhibit I show that.

Q. What about all of the categories? The Exhibits do not include all of the categories. Did you obtain the information on all the categories? A. I certainly did.

Q. So isn't this information compiled somewhere? A. Certainly.

Q. So we do have a record which states —
A. 57 jobs that I mentioned prior in this case.

HEARING OFFICER: Those are non-incentive jobs?

THE WITNESS: That is correct.

By Mr. Schwarzwald:

Q. We do have the classifications then in which no employees were working at the Elyria Plant?

172 A. That is correct.

Q. On the week ending June 4th? A. Correct.

Q. You have the total list with you here in the hearing room? A. My Exhibit was taken out. I don't

know if I have them with me or not, my original records. I know I have the information, yes.

MR. SCHWARZWALD: May we go off the record?

HEARING OFFICER: Off the record.

(Discussion was had off the record.)

HEARING OFFICER: On the record.

By Mr. Schwarzwald:

Q. If I understand your testimony, Mr. O'Dell, at this time you cannot tell us which classifications, both incentive and non-incentive, there were no employees working at the Elyria Plant during the week ending June 4th 1965? A. As far as incentive I think I did tell you. I told you which classifications I had no employees in.

Q. That is for that week ending June 4th for incentive? A. That is correct.

Q. For non-incentive? A. I wouldn't make a statement.

Q. Now, returning to Company Exhibit 6 which you still have there in front of you, could you explain
173 to us how this column which is headed AVG, and I take it AVG stands for average, is that correct?
A. Yes.

Q. HRLY stands for hourly? A. Hourly earnings.

Q. Would you tell us how those figures were derived? A. As I indicated previously, I would take the payroll, which I did, for the week ending 5-23, take each individual as an employee, his total earnings less overtime divided by total hours worked and come up with his average hourly wage in that particular week. This is done in every instance. I took all 28 employees, such as the Machine Operator "A", totalled this average up and divided by the number of employees involved, 28, for this figure. Some of these employees may have made \$4.10 an hour and

some may have made \$2.55 an hour, still came up with an over-all average of \$3.706. The figures are accurate.

Q. You say you excluded all overtime pay?

A. That is correct. Actually at this time of the year, May 23rd, there would be very little overtime for anyone involved in the plant.

Q. Did you include premiums, shift premiums?

A. Shift premiums, yes.

Q. Does the company keep figures on the minutes of production by classification? A. Minutes?

174 Q. How many minutes of production the Machine Operators "A" get in that week? A. Well, this wouldn't appear on my payroll listing. It would appear on each employee's weekly pay report slip that he receives in his pay envelope, yes.

Q. Perhaps a few questions will make that clear. What I mean by minutes so that we may understand each other, others who read this record may not, the company pays incentive pay does it not based upon the minutes of production over 60 in an hour?

A. That is correct.

Q. The same system is followed in both Elyria and Medina Plants? A. Right.

Q. And therefore as you say each employee must each week have a total number of minutes which are credited to him to figure his pay — A. That is correct. But each day is broken down individually.

Q. The record made at the end of each day?

A. Pardon?

Q. A record of each individual's, a record of each employee's minutes are made at the end of each day? A. In our tabulating department they have a

175 breakdown daily. They are thrown into the machine and calculated on a weekly basis.

Q. As I understand it minutes often are given for a total job on which more than one man performs

part of the task and then the total number of minutes is divided by the number of men who have done that job? A. This is true. Group incentive.

Q. Then by totalling each of the individual's minutes in any classification, such as Machine Operator "A", at both plants you would then know how many minutes that classification produced in any week in question, is that right? A. Gee, I never totalled that figure. I wouldn't know what that would prove.

Q. But that is what it would be, would it not?

A. By totalling the minutes you would have the production of time, yes, for all employees.

Q. Sir, have you ever seen the phrase day rate?

A. Certainly.

Q. What does that phrase mean to you? A. Well, as you asked me before regarding one of the letters, stating that the add-on to our day rate or base rate has been increased from 50 cents to 50 per cent. This would be a method of payment to employees for unmeasured work. Which was your question before.

176 Q. Is that all that the phrase means to you?

A. Day rate?

Q. Yes. A. It means to me that a man has \$1.52 plus 50 per cent of that figure as his hourly rate of pay for all hours on unmeasured work.

Q. That phrase isn't used in any other context, there is nothing else in your plant that is referred to as a day rate? A. I refer to the non-incentive people once in awhile as being on a day rate. A man who is on idle time he has a day rate period.

Q. Sir, is it your testimony that Company Exhibit 6, well, is it your testimony generally that all the employees at the Elyria Plant were drawing the twelve months rate on the date of the election?

A. No. I made no contention of that.

Q. Was that the situation for the week ending May the 23rd, that they were all drawing the twelve

months rate? A. No. This is the one that I am talking about. It definitely would not be that they are all making top rate.

MR. STITH: Pardon me. Are we speaking about incentive or non-incentive.

THE WITNESS: I am talking about incentive. Table 6 is incentive.

177 By Mr. Schwarzwald:

Q. We are clear that they were not all drawing the twelve months rate as to incentive? A. In all instances, no. That is correct.

Q. Was it your testimony that non-incentive employees were all drawing the twelve months rate? A. I don't recall making that statement. No, sir. I don't think I was asked that question.

Q. Now, showing you Company Exhibit 2, you have testified that is a photostat copy of a letter given to you by employee Grabenstetter, is that correct? A. No. I said it was given to me by James Webb the foreman and he received it from Harry Grabenstetter an employee.

Q. You are correct. Thank you. Have you ever seen any other copies of that letter, originals, other than copies made from the one given to you by Webb? A. I don't recall seeing any other originals, no.

Q. Is it your testimony that Webb told you that Grabenstetter told him that he received the letter on June the 3rd, is that right? A. That is correct. When he got home.

Q. You do not know even by hearsay when any other employee in the plant received this letter, is that correct? A. I know of a few others that received it, yes, sir.

178 Q. Anyone else tell you when they received it? A. Yes, sir, they did.

MR. STITH: Mr. Hearing Officer, is it going to be necessary to subpoena 105 people on this particu-

lar point? We are prepared to do it if counsel for the Petitioner wishes to explore it. If there is any question about when it was received I am indicating that we will have enough people here to support this.

MR. SCHWARZWALD: There may be some question.

MR. STITH: By the sheer weight of it.

MR. SCHWARZWALD: We will have to see what the situation is, what this witness knows.

By Mr. Schwarzwald:

Q. Now, sir, can you name other employees who told you they received this letter? A. Certainly.

Q. Tell us when they told you that? A. I don't recall when they told me this.

Q. Can you name them? A. Yes.

Q. All right. A. James Burgess; Ted Monday and naturally Mr. Grabenstetter.

Q. Did you talk to Grabenstetter personally?

179 A. No, I have not.

Q. Who talked to you personally? A. Mr. Webb.

Q. Did Mr. Burgess talk to you? A. Yes, he did.

Q. Did Mr. Monday? A. Right.

Q. Anyone else? A. None that I know of right now. That was quite awhile ago.

Q. Do you remember when you talked to these people, when you talked to Monday and Burgess?

A. No, I don't. That was sometime ago I am sure.

Q. Do you know where these people live, do they live in the City of Elyria? A. No, I don't know right offhand. I know Mr. Grabenstetter is the Mayor of La Grange so he must reside in La Grange.

MR. HAROLD SMITH: I know where these people live.

By Mr. Schwarzwald:

Q. Where is La Grange? A. I would say about 15 miles south of Elyria, 10 to 15 miles on Route 301.

Q. But these are the people that you talked to, is that correct? A. That is correct. As I mentioned I
180 did not talk to Mr. Grabenstetter.

Q. I am talking about Burgess and Monday.

A. Yes. Just in a general discussion.

HEARING OFFICER: Was this after the election?

THE WITNESS: Pardon me?

HEARING OFFICER: Was this after the election?

THE WITNESS: Yes, it was.

HEARING OFFICER: Any idea how long after the election?

THE WITNESS: I would say in the next day or two after the election.

By Mr. Schwarzwald:

Q. Do you know if anyone else in the company has talked to any other employees to ascertain when they received this letter? A. No, I wouldn't know of this.

Q. To your knowledge no one else has talked to them? A. Not to my knowledge. As I say, I am just speaking for myself.

Q. Just so we have it clear, sir, Petitioner's Exhibits 2, 3, 4, 5 and 6, you said that you did not write these? A. That is correct.

Q. You are not familiar with their contents?

A. No. Not without reading each one. Then I could
181 familiarize myself.

Q. Do you know anything about calculations made to arrive at figures, did you have anything to do with the figures that were published in these? A. I don't know. I haven't read them.

Q. Petitioner's Exhibit Number 5 contains the following statement:

"... You'll be interested to know that our straight time average hourly earnings from April were 53.6 cents an hour higher than the USW-represented employees at Henry Furnace in Medina."

MR. STITH: Mr. Hearing Officer, I would like to make an objection here and to any further questions consistent with my request that the stipulation be withdrawn as it relates to these letters so I don't have to repeat the objection.

MR. SCHWARZWALD: Mr. Hearing Officer, I would like to be heard on that.

HEARING OFFICER: All right.

MR. SCHWARZWALD: It is Petitioner's contention in this case, one of its defenses, that the company has made very substantial representations in its literature prior to the union making any statements at all dealing with wages and issues that have been specifically made here. That these misrepresentations, the extent of their grossness should be explored and
182 introduced by the Petitioner as a defense to the fact that the company had no grounds or status for setting aside this election.

MR. STITH: I can only add to that what I said before, Mr. Hearing Officer. That if the union felt this was the case that they had their rights under the Regulations to file objections. Apparently they were not filed.

MR. SCHWARZWALD: I think the Hearing Officer understands the point.

HEARING OFFICER: So far as the witness can answer the question I will permit him to answer. Objection overruled.

By Mr. Schwarzwald:

Q. Do you recall the question?

MR. SCHWARZWALD: Would you read the question?

(The Reporter did as directed.)

THE WITNESS: To my knowledge I don't recall.

By Mr. Schwarzwald:

Q. You have no knowledge on what that statement is based on? A. No, I haven't.

Q. Do you know who did the figuring? A. No, I don't. I didn't write the letter so I don't know. I prepared so many figures during this period.

Q. You say that you might have done the figures and just don't remember? A. This is a possibility,
183 yes. It could be.

Q. Did you read this letter before it went out?
A. No. I don't know what letter you have reference to now.

Q. Petitioner's Exhibit Number 5 dated May 13, 1965? A. No. I will say that I don't recall setting up the figures myself.

Q. Wouldn't such a figure if it were derived by calculation have had to be done from the records which you are in charge of? A. Not necessarily. There are payroll recaps each week which Mr. Lindsay, Mr. Blinds our Vice-President all have access to this. All management people.

Q. I see. You say that you do not remember reading the letter or doing the calculations? A. Oh, I recall reading the letter, yes. Now, that I read more of it. But I do not recall figuring the calculations. That is correct.

Q. And you personally had nothing to do —
A. Writing or anything.

Q. — writing or preparation — A. Not a bit.

Q. — of the material upon which this statement was based? A. That is correct.

184 Q. Mr. O'Dell, on these job numbers, the phrase job numbers in your testimony, would you explain what you meant by that? A. Job numbers?

Q. Perhaps if you didn't use it your counsel did. I thought that you responded to it. I wasn't totally clear on that. Does that mean anything to you? A. It didn't ring a bell. Unless you have reference to rates on each job, these have job minutes assigned to them. It is possible that would be what the statement was.

Q. The number of minutes assigned to complete the job? A. Yes.

Q. The number of minutes credit given for the completion of a certain job. A. That is right.

Q. If I understand the system correctly that job could be anything from a single weld or placing a single bracket to the assembling of an entire furnace? A. Right.

Q. It might include various numbers while there may or may not be various sub-assemblies, separate job numbers put into the production of the final product? A. Definitely.

Q. This same general system is used at both plants? A. That is correct.

185 MR. SCHWARZWALD: Mr. Hearing Officer, I move that Company Exhibit 6 now be rejected as having no application to the material issue in this case. That Company Exhibit Number 2 be stricken because of insufficient proof that this Exhibit was received by enough employees to substantially affect the conduct and the outcome of the election.

MR. STITH: May I speak to that, Mr. Hearing Officer?

HEARING OFFICER: Yes.

MR. STITH: In the first place, I attempted to indicate before there is only one way that the company can prove the disparity in the union's letter to the employees with respect to incentive. That was to

take a particular payroll period, determine what happened in that payroll period and make a comparison between the two plants. This is the procedure that is generally followed in making comparisons of this type. So in our opinion we feel that it is very material to the case and consequently should serve a useful purpose to the Hearing Officer in making his recommendations for the Board on the issues involved in this case.

Now, as to the second one, concerning the union's letter, we have already indicated that we can submit further evidence to the extent which this letter was mailed out by having other employees testify on this point. We are certainly prepared and willing to do this if the Hearing Officer denies the letter or rejects
186 that as an Exhibit. Of course, we might as well pack up our bags and go home because this is the very basis upon which the company objected to the election. So if there is any indication in that direction I certainly hope the Hearing Officer will give us enough time to produce the weight of the evidence on this point to make it clear that this letter was, no question that it was prepared by the union, there is a question apparently raised by counsel for the Petitioner that it was ever sent, I think we should be heard on that point.

HEARING OFFICER: Are you saying that this letter wasn't sent or wasn't received by the employees?

MR. SCHWARZWALD: I think the question — we have testimony some employees received it and the date on which they received it.

HEARING OFFICER: This is Mr. Taggart's signature on this letter, is it not?

MR. SCHWARZWALD: Yes.

MR. STITH: For what other purpose would it have been prepared? As I say, if they are denying that it was sent then I think we have got to bring in enough people to substantiate this.

HEARING OFFICER: Is it your position. Mr.

Schwarzwald, that this letter was not sent to the employees of Olsen?

MR. SCHWARZWALD: Stated that way, yes.

That is part of our position based upon the evidence
187 that we have here. We know that three employees received it and that is all we know. We know when they received it but we do not know when other employees received it which I think would be a question beyond when it was sent.

MR. STITH: He starts off by saying that he doubts that it was sent. Then there is the second question as to when. Now, I think the Board would take judicial notice and so will the Hearing Officer that in campaigns of this type it is customary for the union to prepare material and send it to all employees who might have an opportunity to vote in the election. We request the Board to take judicial notice of that fact.

HEARING OFFICER: Let me ask you this. Mr. Schwarzwald, are you going to have Mr. Taggart testify further in these proceedings?

MR. SCHWARZWALD: That has been my intention. I think it will be. But that is open to change depending upon what happens with the company witnesses.

HEARING OFFICER: I think Mr. Taggart is the person who can best testify as to when this was written, if it was written by Mr. Taggart, and what if anything was done with it either by Mr. Taggart or by someone from his office. I think he could answer the question that way. So I will overrule your objection as to both Exhibits, Number 2 and Number 6.

* * * * *

188

REDIRECT EXAMINATION

By Mr. Stith:

Q. Mr. O'Dell, I merely want to clear up one statement that you made on cross-examination.

You said that the comparison was made by job title as to similarity of job title. Whereas on direct

examination in answer to a similar question your statement was that they were selected because of comparability as to duties and responsibilities. Now, will you please have the record state which is is the case? A. You are talking about what
 189 classification?

Q. The classifications that were included in the Exhibits Number 5 and Number 6? A. They were jobs that were comparable and similar in the nature of their work.

Q. And not necessarily by job titles? A. Not necessarily job titles only, no, sir.

MR. STITH: That is all.

190

* * * * *
 THEODORE W. O'DELL
 * * * * *

RECROSS EXAMINATION

By Mr. Schwarzwald:

Q. Mr. O'Dell, didn't you testify on cross-examination that you did not know of the content of the jobs at the Medina Plant, you did not know what people did in various classifications? A. That is true.

Q. So that the record is clear, have you told us at the time of the election, of the week ending on June 4th, if you know, how many employees were on the second and third shifts at both Medina and Elyria Plants, do you know? A. No, I don't have any idea
 191 how many were on the second in Medina.

Q. Do you know in Elyria? A. As of June 4th the date of the election or the date of my Exhibit?

Q. The date of the election if you know? A. I don't know.

Q. What is the closest date to that time of which you do have knowledge? A. Week ending May 23.

Q. What are those figures? A. As I answered previously I believe there were 22 on the second shift and 11 on the third shift at the Elyria Plant.

This is not a real accurate figure.

Q. Do you know how many of these were incentive and how many were non-incentive employees?

A. Oh, gee — just as a guess I would say on the second shift there were 5 non-incentive and that would leave 17 non— 17 incentive. Not over 2 non-incentive on the third shift.

Q. You say this is a guess? A. Yes, this is.

HEARING OFFICER: 5 non-incentive and 17 incentive on the second shift?

THE WITNESS: Approximately.

HEARING OFFICER: And on the third shift?

192 THE WITNESS: 2 non-incentive and which would leave 9 incentive, approximately.

By Mr. Schwarzwald:

Q. You have no knowledge with regard to the week ending June 4th? A. No, I don't. It wouldn't vary much from that but I don't have that much recollection of that.

Q. Showing you again Company Exhibit 4, pages 19 and 20, now, the rates stated there, is it true that those are the rates that the employee is guaranteed for every hour which he works depending of course upon his seniority as to which classification he falls in? A. On the first shift, yes. I mean there is a shift premium on non-incentive employees also.

Q. All right. But this would be for every first shift employee, it would be the starting point for everybody else? A. That is right.

Q. And for incentive people these are guaranteed regardless what they produce? A. As long as they worked one year with the company, yes.

Q. If they have worked, there is a hiring rate three months, six months, twelve months? A. They would be guaranteed whichever group they came in there as.

Q. Now, as I understand your testimony, I am giving you again Company Exhibit 4, did the employees receive anything in writing dealing with any of these benefits prior to the issuance of Company Exhibit 4?

MR. STITH: He has already answered that. He already testified as to that.

HEARING OFFICER: He has. This is cross-examination so I will permit him to answer again.

THE WITNESS: Prior to May of 1965, they were told verbally what their rate of pay was.

By Mr. Schwarzwald:

Q. What about the other benefits? A. The other benefits? Verbally with the exception of life insurance policies, hospitalization policies. These they received and it was issued to them.

Q. These are, you say policies, these are certificates that the insurance company provides that you give to the employees? A. That is correct.

Q. Directing your attention to pages 24 and 25 of Company Exhibit 4, is it correct that those certificates dealt with the benefits specified under the heading of Group Insurance and under the heading Hospital Expense and Surgical Operation Insurance? A. These are the policies I had reference to, yes.

Q. Is there anything in writing in regard to any other benefits? A. Not to my knowledge right off-hand.

Q. Were the employees given any knowledge of their benefits at other than their hiring interview? A. Only when there would be changes in the benefits.

Q. How would they be informed of that? A. Either through a letter to the home or a bulletin on our bulletin board which would be posted throughout the plant.

Q. Did you prepare this booklet? A. Pardon?

Q. Did you prepare this book? A. I helped on this booklet certainly.

Q. You are familiar with it then? A. Definitely.

Q. Were you the person in charge of its preparation? A. I would say so, yes. Many people worked on it.

Q. Is this booklet a statement of all benefits that the employees have previously been notified of? A. I would definitely say yes.

Q. There are no additional benefits of any kind? A. In the book?

Q. Yes. A. No. I don't believe so. Any benefits that are in here were published through bulletin boards or letters to the homes.

195 Q. That includes all the types and forms of benefits in this booklet? A. Pensions, Hospitalization, Life Insurance, yes.

Q. You are sure of that now, it is definitely your testimony that there is nothing new added in this book? A. I don't believe there is. You want me to take the time and go through each piece of it? I would be very happy to.

Q. That is why I asked you whether you were in charge of preparing this, sir. A. I was.

Q. I just want you to tell me. A. You are speaking strictly of benefits? That is what you said?

Q. Well, you are distinguishing from other contents of the book? A. That is correct.

Q. What are you referring to by benefits? A. I really meant most of the book except for introductory passages.

* * * * *

196 HEARING OFFICER: There has been much discussion about base rates, what are base rates, Mr. O'Dell?

THE WITNESS: Well, for incentive groups they are the only rate they have of pay. After computing their pay, it is \$2.80 an hour or \$2.60 whatever their
197 status is as far as number of years of service or months. As far as incentive classifications of work the base pay in my opinion is the, day shift employee would be the base rate as established in the book, handbook, Exhibit Number 4 I believe. Second shift employees would be base rate plus the six cents per hour for working the second shift. The third shift would be base rate plus twelve cents per hour for working the third shift. This is all classified as base pay.

HEARING OFFICER: You have base pay for both incentive and non-incentive employees, correct?

THE WITNESS: This is correct.

HEARING OFFICER: With respect to the non-incentive employees the base rate is the rate of pay as set forth on pages 19 and 20 to which is added any shift differential and/or overtime?

THE WITNESS: This would not be the base pay, no.

MR. SCHWARZWALD: Objection, Mr. Hearing Officer, I just want to make it clear that if you are questioning this witness as to his opinion he is not qualified as an expert or anything at this point, if you are asking questions as to his opinion.

HEARING OFFICER: I am not asking questions about his opinion. I am asking him if he knows, I am asking him what the definition of a base rate is, I am not asking for any opinions.

198 MR. SCHWARZWALD: I am wondering whether the issue in this case, whether this particular witness is qualified to answer that question.

HEARING OFFICER: If he can answer it he can so state. If he can't answer it he can so state.

MR. SCHWARZWALD: I don't mean qualified in the sense of having knowledge. It seems to me that the question of this type, at this point, at this particular setting in this particular hearing which deals — is seeking an expert opinion. I don't think this witness is qualified to give that sort of opinion.

MR. STITH: Mr. Tuk, may I say something on that point?

HEARING OFFICER: Go ahead, Mr. Stith.

MR. STITH: Briefly, Mr. O'Dell has testified that he has worked for the company for seventeen years, the last eight of which serving in the capacity of Personnel Manager. Now, in the general concept of that term I am sure that he is ably qualified to answer a question such as: what does the company consider a base rate? He need qualify as an expert to point out to the Hearing Officer how the company handles these things as a practical matter.

MR. SCHWARZWALD: If that is the question I withdraw my objection.

HEARING OFFICER: I thought the question was quite clear.

199 THE WITNESS: It was clear to me.

HEARING OFFICER: I asked the witness, What were base rates? I didn't use the word opinion nor did I even suggest that I was inquiring as to his opinion. I asked simply, what is the definition of base rate for both the incentive classification and the non-incentive classification, if you know.

THE WITNESS: As stated for non-incentive, it is the figure either at the hiring rate, three months rate, six months rate or twelve months rate for all first shift employees. If any of these employees in the non-incentive group would be on the second shift they would have twelve cents per hour added to their wages, to their base rate — excuse me —

HEARING OFFICER: When you add this shift differential, does that then become their base rate for the second shift?

THE WITNESS: Yes, sir.

HEARING OFFICER: And likewise when their premium is added for the third shift that becomes their base rate?

THE WITNESS: Their base rate as far as they are concerned.

HEARING OFFICER: Now, what about the incentive employees?

THE WITNESS: Incentive, say Arc Welder "A" top rate \$1.575 is his base rate on days. \$1.575 plus .06 on the second shift or \$1.635 is his base rate.
200 On the third shift the \$.12 add-on would be \$1.695 per hour. This is base rate.

This is also the method for incentive employees of computing or calculating their incentive earnings on this base rate.

HEARING OFFICER: Do you know whether or not the situation is the same as to base rate for incentive and non-incentive employees at Medina Plant?

THE WITNESS: With the exception that at the Medina Plant, let's take the incentive classification, they have a base pay which their incentive earnings are calculated upon. They get a straight \$0.05 per hour, straight \$.05 per hour add-on, so they are \$.40 per shift or second shift excuse me — added to their base earnings. This is what they receive.

HEARING OFFICER: Then is it your testimony that the base rate at the Medina Plant would be the rate stated in Company Exhibit Number 3 at page 39 and 40 plus the shift differential?

THE WITNESS: I am sure it would be for the non-incentive. Incentive I would say it is an add-on after their incentive earnings have been calculated.

Therefore, the man's base rate would be the figures stated in the book.

HEARING OFFICER: Is the base rate for the incentive classification the same as that which appears at page 40 of Company Exhibit Number 3 for
201 the three months, six months and one year periods?

THE WITNESS: I don't think I understand your question, sir.

HEARING OFFICER: On page 40 —

THE WITNESS: Yes.

HEARING OFFICER: — of Company Exhibit 3 —

THE WITNESS: Yes.

HEARING OFFICER: — it has all the time periods, three months, six months and one year set forth, correct?

THE WITNESS: Correct.

HEARING OFFICER: And under each one of those time periods is set forth a number of hourly rates, is that correct?

THE WITNESS: Yes.

HEARING OFFICER: Are these the base rates?

THE WITNESS: Yes.

HEARING OFFICER: Now, in order to get a base rate for the incentive employees at Elyria, Company Exhibit Number 4, you have to first add on the shift differential?

THE WITNESS: Yes, sir.

HEARING OFFICER: What about the non-incentive employees at Medina at The Henry Furnace Company?

THE WITNESS: Their base rate I imagine would have to be added and included in. This would be their base rate then. \$2.59 plus whatever their add-on is,
202 whether it is \$.10 per hour or whatever it might

be. I am not an expert on the Medina contract. Yes, \$.10 per hour. That is incorrect also. \$0.05 per hour whether they are incentive or non-incentive on the second shift add-on, whether it is either classification.

HEARING OFFICER: Your non-incentive employees at Medina have a base rate of pay which is comprised of what, starting with the first shift, take the second shift, and then the third shift?

THE WITNESS: First shift, Millwright A on year classification would be \$2.65 day shift, first shift.

HEARING OFFICER: \$2.65?

THE WITNESS: Yes.

HEARING OFFICER: All right.

THE WITNESS: The second shift man would be \$2.65 plus \$0.05, \$2.70 would be his base rate. Third shift \$2.65 plus \$.10, \$2.75 would be his base rate.

HEARING OFFICER: All right. Now, to the incentive classification?

THE WITNESS: Well —

HEARING OFFICER: Take the Truckers, what is the base rate of pay for a Trucker going first, second and third shift?

203 THE WITNESS: First shift is \$1.48. You want my opinion on that?

HEARING OFFICER: I want to know what you know. I don't want your opinion.

THE WITNESS: Well, I am not qualified as an expert on the Medina contract. All I am saying in reality —

HEARING OFFICER: I guess we exhausted that line then. If you don't know what it is I don't want you to testify to that.

THE WITNESS: Let me say this. The incentive

earnings are figured on \$1.48 figures and I don't care what shift they are on. The \$0.05 an hour is strictly pay as many hours as the individual works.

HEARING OFFICER: You know that of your own knowledge?

THE WITNESS: Yes, I know.

* * * * *

209

RON W. LINDSAY

was called as a witness by and on behalf of the EMPLOYER and, having first been duly sworn, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION

By Mr. Stith:

Q. Where are you employed, Mr. Lindsay?

A. Luxaire, Incorporated, Elyria, Ohio.

Q. In what capacity are you employed and for how long? A. As President of the company since September 1964.

Q. Were you functioning in that capacity on the date the petition in this matter was filed? A. Yes, sir.

Q. Are you familiar with any of the events that transpired in connection with this petition? A. Yes, I certainly am familiar with them. I was directly involved in a lot of them. I thought it was my duty to advise the employees of what exactly was —what was going on and what the company's position was regarding the election.

210 Q. How was this task of communication carried out so far as the employer was concerned? A. I had a number of letters prepared which I signed and sent out to the employees.

Q. Were you furnished with copies of any material that was put out by the union during the campaign? A. Yes. Ted O'Dell and Edward Blinds our Vice-

President of Manufacturing brought them in to me as they came out.

Q. What was the date of your last letter to the employees? A. May 28, 1965.

Q. That was the last written communication?
A. Yes.

Q. Are you familiar with the contents of what has become Company Exhibit Number 2 in this case, the union's letter to the employees? A. Yes.

Q. What was your reaction as President of the company to this letter.

MR. SCHWARZWALD: Objection.

MR. STITH: He could state what his reaction was. He is the official in charge.

HEARING OFFICER: Overruled.

By Mr. Stith:

211 Q. You may answer. A. Well, I was particularly disturbed with the last paragraph that has been referred to in this hearing wherein the union put out misinformation regarding the base rates pay in the Medina Plant as paid in the Elyria Plant. It also referred to standards.

I was particularly disturbed because I thought this reference must have been deliberate and calculated to confuse or mislead our employees just prior to the election because the Union, the United Steelworkers, have represented us at Medina for a number of years. They certainly would have known. If they had put out that information earlier we would have taken exception to it and would have advised our employees and come up with a rebuttal on that.

Q. Well, were you able to do anything to accomplish this rebuttal? A. Actually that letter was given to me about 9:00 o'clock in the morning of the election. As the election was then in progress, the third shift voting at 6:45, we were unable to get anything

out at that time.

Q. Well, why did your company file the objection in this case?

MR. SCHWARZWALD: Objection.

HEARING OFFICER: Sustained.

By Mr. Stith:

Q. Did you personally get any comments or statements from the employees concerning this letter?

212 MR. SCHWARZWALD: Objection.

MR. STITH: I think he could testify to it.

HEARING OFFICER: What is the basis of your objection, Mr. Schwarzwald?

MR. SCHWARZWALD: I think it may be hearsay.

MR. STITH: I said did anyone say anything to him about their reaction concerning the objectionable paragraph.

MR. SCHWARZWALD: It is not a matter about their reaction. It is a matter of conversation, going into the truth of the statement that would be hearsay.

HEARING OFFICER: Did any employee contact you about Company Exhibit Number 2?

THE WITNESS: Ted O'Dell contacted — brought me the Exhibit.

HEARING OFFICER: He is not an employee.

THE WITNESS: Sure he is an employee.

HEARING OFFICER: He is not an employee that would have been represented by this union or affected by this letter?

THE WITNESS: No.

HEARING OFFICER: With the exclusion of Mr. O'Dell, were there any other employees who brought this letter to your attention?

THE WITNESS: Not to my knowledge. No, sir.

213 HEARING OFFICER: All right.

By Mr. Stith:

Q. As an employer, Mr. Lindsay, what is your company's wishes with respect to this entire matter?

MR. SCHWARZWALD: Objection.

HEARING OFFICER: Sustained.

By Mr. Stith:

Q. Mr. O'Dell has testified that the company handbook, Company Exhibit 4 I believe, was printed or distributed until May of '65, was there any particular reason for its distribution at that time?

MR. SCHWARZWALD: Objection.

MR. STITH: I think this is germane to the issue.

HEARING OFFICER: How so?

MR. STITH: Because it has been admitted in evidence and any information given concerning a document that has been admitted in evidence, as to the reasons for publication, is certainly relevant. I don't intend to explore it beyond that.

HEARING OFFICER: For that limited purpose the witness can answer.

THE WITNESS: Can I hear the question again?

By Mr. Stith:

Q. I said was there any reason why the handbook was not printed and published until May of 1965?

A. Yes. We had a file on this for some time and had been working on it. Actually I thought that this was
214 an excellent time to put in writing all of our policies and benefits of the company for a number of reasons rather than keep up a running battle with the union and the propaganda that was put out. It would clearly define whatever we had by this method. Also one of the statements that the union had often made in some of their propaganda was the benefit of a contract.

I felt by putting our policies and everything in writing we would in effect be giving our employees something in writing that they could really hang their on.

Q. Although this has been touched upon I would like you to describe for the record if you will the different types of manufacturing products at both the Elyria and Medina Plants? A. At Elyria we manufacture air-conditioning equipment; gas infrared heaters; oil furnaces; electric furnaces; Lo-Boy Gas Furnaces and a deluxe Hi-Boy Gas Furnace. None of those are manufactured at Medina.

At Medina they manufacture builders line of Hi-Boy Gas Furnaces which differs from our deluxe line. They manufacture gas fired unit heaters; manufacture gas fired horizontal furnaces; we manufacture furnace pipe and fittings. None of these are manufactured at Elyria.

Q. Would this difference in products manufactured account for the job that all job classifications are comparable? A. Yes, sir.

215 Q. Would it also account for the fact as testified that there were only four incentive jobs that were identical at the two plants? A. Yes, it certainly would. Different manufacturing techniques.

Q. Mr. O'Dell testified that with respect to those four incentive jobs that the minute value allowed was different at Elyria than at Medina. Would you care to comment on that and perhaps indicate how this affects the situation?

MR. SCHWARZWALD: Objection.

MR. STITH: He did testify to it.

MR. SCHWARZWALD: Just about Company Exhibit Number 7. It was rejected.

MR. STITH: He had testimony. He didn't rule that out. He ruled out the written document. But Mr. O'Dell did testify.

HEARING OFFICER: The witness may answer.

THE WITNESS: This is a particular component that is similar, the heat exchanger for the furnaces, comprised of individual elements. Output of 25,000 BT's per element. The element is put on and welded automatically. At that time it is put in a jig and the pouch is welded to the elements. In case of the 3-element it would be 75,000 BTU. A pouch would be
 216 welded on and the base would be welded on and there would be a number of allowed minutes for each plant on this particular item.

I believe the 3 element unit at Medina the allowed minutes are approximately 12, in Elyria approximately 14, which in effect means that if a man takes 15 minutes to weld this unit he gets his base rate. But if he takes 10 minutes to weld the unit in either plant then obviously the Elyria welder will realize more money.

Q. To your knowledge, Mr. Lindsay, has the Medina labor contract booklet ever been posted at the Elyria Plant? A. No, it has not.

* * * * *

217

CROSS-EXAMINATION

By Mr. Schwarzwald:

Q. Mr. Lindsay, you are President of The Henry Furnace Company? A. Henry Furnace Company Division, yes, sir.

Q. Have you held that position for the same period of time that you have been President of Luxaire? A. Yes.

Q. You are therefore the Chief Executive Officer of both companies, is that correct? A. Yes.

Q. Now, sir, am I correct in saying that the Elyria Plant furnaces which are sold under the trade
 218 name of Luxaire? A. Elyria Plant produces furnaces that are sold under the trade name of Luxaire, Moncrief, Westinghouse, South Air and maybe one or two others that I can't remember offhand.

Q. What about the Medina Plant? A. The Medina Plant is identically the same. We ship from both plants. We actually put the name plate on at shipping time so the product is identical but the name plate.

Q. In other words, you mean there are some Luxaire Furnaces and Moncrief Furnaces that are essentially the same just the difference in the name plate? A. Yes.

Q. And these furnaces are made at both plants? A. As I outlined, an electric furnace with a Moncrief name is made in Elyria, electric furnace with Luxaire name plate is made in Elyria and so forth.

Q. But then there are a number of furnaces precisely the same that are made at both plants? A. I know of none.

MR. STITH: That is exactly what he did not say.

By Mr. Schwarzwald:

Q. You mean there is no furnace made in Medina that is like the furnace made in Elyria? A. I know of none that are identical.

Q. Do you know of any that are substantially the same, of course excluding name plates? A. Exclud-
219 ing name plates — well, it all depends how far we go with the substantial portion of it. We make a horizontal oil furnace in Elyria and a horizontal gas furnace in Medina. Both would be horizontal furnaces. One would be fired with oil and one would be fired with gas. The heat exchanger would be different, over-all dimensions.

Q. Let's narrow it down a little bit. Let's talk about gas furnaces, let's talk about 100,000 BTU gas furnace. Is there one made in Elyria? A. The comparison — the closest comparison — yes, there is a 100,000 gas furnace made in both plants.

Q. Are there more than one model of 100,000 BTU made in Elyria? A. Yes.

Q. How many models are made? A. Here again I would have to know how close the definition you would want on this. We would make a 100,000 deluxe gas furnace which would be — to give a figure number — our SU-100. Now, in addition to that, that same configuration —

Q. This is a SU-100 that we are talking about in Elyria? A. Elyria. We would also make SU-100-BH which would be belt drive for heating only. We would make AH which is direct drive for heating only. Then we get into different categories of air-conditioning. So you could call these different models but basically
220 it is one furnace. So I don't know how close a definition you want.

Q. All right. Is there anything like the SU-100 made in Medina? A. Like the SU-100? The closest thing would be a GS-100 which is the Builders Furnace.

Q. You say a Builders Furnace — A. We classify it as a Builders. There is a difference in price. What we make in Elyria is a deluxe furnace that has more features to it, has more in it, more sales features.

Q. They are both automatic furnaces I take it?
A. What do you mean by automatic?

Q. Thermostatically controlled? A. Each one is thermostatically controlled.

Q. Same BTU, the same burners? A. The same BTU.

Q. Same burners? A. And burners.

Q. Same size cabinet? A. No, sir.

Q. Casing? A. No, sir. Entirely different casing. One has a front door on it with a draft reverter on it. The Builders Furnace has a straight shot up the chimney. The one in Elyria that the Luxaire — the Luxaire Furnace has a resident mount on
221 the floor, the blower is mounted different. The one in Elyria has different controls which means it is

wired differently or takes a different procedure in wiring from the one in Medina. So there are differences here.

Q. Aside from those differences that you just detailed it would be the same? A. I could name more if you want more.

Q. Are parts ever made in one plant for use in the other? A. Yes. We do make some parts in one plant for use in the other.

Q. There is a shipment of parts between plants every week? A. Most likely every day. Particularly in this time of the season. Finished goods and so on.

Q. Is there a SU-125 Furnace, do they step up to 25,000? A. Our basic heating element is 25,000 and 20,000 BTU capacity. So any range of our product would be in increments of 25,000 BTU on a furnace, gas.

Q. And is there a GS-125 too, furnace? A. Yes.

Q. Are there certain parts in furnaces, let's take the gas fired furnaces for a moment, that are identically the same that are made in both plants?

A. I mentioned the heat exchange. This comes about as close as anything that would be identical. You are
222 talking about a sub-assembly now or an increment of the furnace, right?

Q. Well, yes. At the moment let's think of that.
A. I believe the burners is made in both places.

Q. Burners. A. That is all I can think of right now.

Q. What about casings, same size casings at both places? A. No. The casings are different. We would make the SU or SI type casing only in Elyria because of a particular machine that we have there that forms the edge. Naturally we only make the GS casing in Medina because of the fact that we built that furnace there.

Q. Are these casings a series of sheet metal, sheet metal panels? A. Yes.

Q. Outside covering for the furnace? A. Yes.

Q. Don't you have panels that are the same size in different models of furnaces, you may get a 3 x 5 foot panel made in Elyria and a 3 by 5 panel made in Medina, or some other measurement? I am choosing those only as an example. A. It is possible we might have the same exact measurement of some panel. But where the problem comes in, very often drilling and notching, roll forming, and particularly things
223 like this that become associated with that panel to make them fit a particular furnace. In fact, I don't know if we even have a panel identically the same size in both places.

Q. Don't you have panels if they are not identically the same size that they are made with the same process, they are attached to the other side panels in the same manner? A. If I had a blackboard I could show you the difference in the deluxe furnace and the GS. Actually in the deluxe furnace we have a shadow box effect in the front. We have a door that swings open on this and has a chrome strip around the door. We actually have a bevelled edge on the front of the furnace. Now, this is part of the side panel casing. On the GS or Builders Furnace we have a flat casing turned over on each side. We have a slide in three piece door, which as you can see, that would make it entirely different and we could not interchange these panels on these two furnaces in any way whatsoever.

Q. What about the other panel other than the front panel? A. The side panel or front panel we could not. The rear panels are entirely different as to size.

Q. You have no furnaces in which the side panels would be the same? A. I know of none.

Q. You have testified that your method of communication with the employees was by a series of

224 letters, is that right? A. Yes, sir.

Q. Do you know how many letters there were in that series? A. I believe they are submitted in evidence.

Q. Let me show them to you and see if they are all in evidence?

MR. STITH: At this point, Mr. Hearing Officer, I would like to enter my objection again to the questioning along this line as it relates to the stipulation which was withdrawn.

HEARING OFFICER: Overruled.

By Mr. Schwarzwald:

Q. I am handing you Petitioner's Exhibits 1 through 6, Mr. Lindsay, would you see if those are all the letters? A. Not in order — to my knowledge that is all of them.

Q. When you say they are not in order you are referring to the fact that Petitioner's Exhibit Number 1, the last one — A. That is what I was referring to, the dates. You go from May to March to April and to May again.

Q. Were those letters mailed to the employees on the date shown? A. To my knowledge they were.

Q. And they all do contain your signature?
225 A. I believe there is one that doesn't. As I recall I had one prepared and left town after I had okayed it. Someone to the best of their ability imitated my signature. But I had approved it before it did go out.

Q. You had approved the contents of the letter?
A. Yes.

Q. Do you know which one it was that you did not sign? A. I do.

Q. You are indicating Petitioner's Exhibit 3?
A. Yes, sir.

Q. Now, sir, did you have any other communication with the employees prior to the election?

A. Yes. I made a speech to the employees.

Q. When did you make that speech?

A. Speeches. The Wednesday prior to the election June the 2nd.

Q. How many speeches did you make that day?

A. One to each shift, that would be three.

* * * * *

228 Q. Mr. Lindsay, you testified that Company Exhibit 4, this booklet, was given to the employees so they would have something in writing to hang their hats on, is that right? A. Yes, sir.

Q. Now, as I understand your testimony this book is a statement of policies that the company already had in effect and it was simply restating them, is that correct? A. Yes, sir.

229 Q. There are no new additions of any kind in this book? A. None that I know of.

Q. There are not any new additions of any kind in this book that had not previously been told to the employees? A. I know of none. The answer is no.

Q. Your testimony is that the employees were informed of all of the contents of this book, that of course is excluding the history of Westinghouse so on and so forth, the history of the company at the beginning, prior to the publication of this booklet?

A. (No response. Nodding head.)

Q. What was the answer? A. Yes, sir.

Q. Thank you. And is it your position that the company has followed the policies of this booklet prior to the issuance of it and since its issuance?

A. Yes, sir.

Q. You testified that you received copies of union material as it was brought out and you attempted to answer that material in your letters?

A. Yes, sir.

Q. And in your speech? A. I answered the union's communications in my written letters. And also in my speech.

Q. That is right. A. In the letters, yes.

230 Q. And in your speech? A. As I recall in the speech I tried to sum up to the best of my ability what we as a company offered our employees, what we were dedicated to do as far as the employees were concerned. I am sure that I must have alluded to the union somehow. As to the exact recollection as of this moment I can't give it to you. But I do have word for word what I did say.

Q. You made a transcript, you read the speech?
A. I read the speech.

Q. Same speech all three times? A. Yes, sir.

MR. STITH: I make my objection and ask that the questions and answers be stricken.

HEARING OFFICER: Overruled.

MR. SCHWARZWALD: Mr. Hearing Officer, I now want to inquire in more detail about Petitioner's Exhibits 2 through 6. Is it your impression at this time that I am under 43(b)?

HEARING OFFICER: Off the record.

(Discussion was had off the record.)

HEARING OFFICER: On the record.

MR. SCHWARZWALD: May I make a statement or shall I just proceed?

231 HEARING OFFICER: Go ahead, proceed.

MR. STITH: He doesn't have to make a change. Under his ruling you still have him on cross-examination. We already objected to that earlier. It has been overruled and I have an exception.

MR. SCHWARZWALD: I just want to make clear what was on and what was off the record.

By Mr. Schwarzwald:

Q. Mr. Lindsay, do you remember in Petitioner's Exhibit Number 5, a letter that is dated May 13, 1965, your statement is:

"... You'll be interested to know that our straight time average hourly earnings for April were 53.6 cents an hour higher than the USW-represented employees at Henry Furnace in Medina."

Do you recall that statement? A. Yes, sir.

Q. You wrote that and authorized that it be written and issued? A. Yes, sir.

Q. Did you have calculations in front of you on which that was based, upon which that was based?

A. Yes, sir.

Q. Were those calculations especially made?

A. No, sir.

232 Q. What were they? I take it they were material that you get normally? A. Yes.

Q. What was that material, describe it? A. I get a report on the average hourly earnings of our employees so that I could compare the two plants. Actually three plants. So I can determine how our employees are making out so to speak. The average hourly earnings seem to be a good way because we can also then compare it with statistics that we can get from the Bureau of Labor Statistics for the different areas of the country and also then compare it with the Northern Ohio Industrial Association Reports. So we do have a good comparison that way I feel as to who we stand.

Q. What do you mean by average hourly earnings, how is that calculated? A. The average hourly earnings are calculated by taking the base rate of pay for the non-incentive workers and shift premium where it applies and extending it out for the week. As far as the incentives are concerned it is to take the base rate plus shift premium and multiply that by

the number of earned minutes and extending it out weekly by classification and coming up with a total for average over-all plant wide total.

Q. Now, this particular figure says straight time, is that the figure you are talking about, straight time average hourly earnings? A. That
233 would mean — yes. Less overtime.

Q. So no overtime calculation entered into either plant? A. No, sir.

Q. So you count neither the overtime hours nor any pay for those hours, is that it? You simply take a 40 hour week if everybody worked a 40 hour week or an 8 hour day, is that the figure you used? What I am getting at — A. No. We would include the total number of minutes and total number of hours on this but would not include the overtime premium.

Q. Oh, all right. That is what I wanted to get straight. A. I am quite sure that is the way.

Q. And these are made out each week at three plants you say? A. Monthly I get it.

Q. What is the third plant? A. Fraizer & Johnson Company in San Francisco, California.

Q. You are saying in this letter, this statement then is true, you alleged based upon those figures? A. Yes, sir.

Q. Do you know what the figures show for the month of March? A. Not without looking it up.

234 Q. Or February or any other month. A. No month.

Q. Those figures are available, you do have them month by month? A. Yes, sir.

Q. Going back to 1964 I take it? A. Further than that.

Q. In other words they were kept before you became President? A. Yes, sir.

* * * * *

238 Q. Mr. Lindsay, do you remember what the figures were that led to the 53.6 cent gap? A. No, sir, I do not remember the exact figures.

* * * * *

239 Q. Mr. Lindsay, if I understand your testimony, so far you have told us that similar furnaces but not totally the same are made at Elyria and Medina but the Elyria one would have more parts, is that right? A. Without looking at a drawing I would have a hard time saying it would have more parts. It would have different parts. Of this I am sure.

Q. Didn't you say that the difference between the Builders Line and I take it is the Home Line that it has more in it in the way of benefits, sales features? A. Yes.

Q. Now, are both types of furnaces, the Builders Line and what I am calling the Home Line for lack of another name, made on an assembly line process, isn't that right? A. Yes, sir.

Q. So then the additional features have to be put in on the Elyria assembly line where they are not put in on the Medina assembly line, isn't that correct? A. Yes. They have to be built on one line or the other.

Q. All right. Now, are gas furnaces a major part of production at both plants? A. Yes, sir.

Q. You estimate over half the production? A. Gas furnaces are over half the production at Medina. I would question whether they are over half the production at Elyria. What are you talking, dollars or units?

240 Q. Units. A. I would say that they would be over half the production in Medina.

MR. SCHWARZWALD: I have no other questions at this time. I understand that under 43(b) that Mr. Lindsay can be called as to our defense.

MR. HEARING OFFICER: That is correct. Can I see those Exhibits?

Mr. Lindsay, with respect to this second objection, the second issue, in the fifth paragraph of Company Exhibit Number 2 which refers to base rates and standards being better at Medina than they are at Elyria. When was the first time that you had any knowledge of this type of representation by the union?

THE WITNESS: You are referring to this letter?

HEARING OFFICER: Yes, sir.

THE WITNESS: About — I received this letter about 9:00 o'clock on the morning of the election.

HEARING OFFICER: Is that the first time that you heard about that?

THE WITNESS: About this letter?

HEARING OFFICER: About the base rate of pay and the standards being higher at Medina than they are at Elyria?

THE WITNESS: Well, actually I did hear indirectly at one time. At one of the union's campaign meetings that someone from Medina had been at this meeting and had mentioned that the rates had been
241 better in Medina. I heard this indirectly. But no statement as to standards.

HEARING OFFICER: When was this in point of time?

THE WITNESS: Oh, most likely three weeks prior to the receipt of this letter. I would say two to three weeks.

HEARING OFFICER: That would put it what, around the first of May?

THE WITNESS: Around the first week in May, I would say.

HEARING OFFICER: Now, this letter of May the 13th, I notice that you discuss the wage rates and on the last paragraph of the page you state, "incidentally, we have checked on the time values for the same work done in both Elyria and Medina and found that

as much or more time is allowed to perform the work at Elyria as at Medina", what prompted that statement?

THE WITNESS: Can I see the letter?

HEARING OFFICER: Yes.

THE WITNESS: Thank you. Our incentive system, we have a base rate, which we certainly discussed today. This determines one thing. But also on an incentive system the time value or the allowed minutes certainly determines how much a man can earn, whether he earns 100 per cent or 200 per cent, whatever is the base rate. So time value is important as far as determining a man's take home pay or dollars in his pocket. So if we are talking rates we
242 are talking earnings. If we are talking earnings then we are going to talk base rates and we are going to talk time values for allowed minutes. So the two go together. I would say that would be a matter of reference there.

HEARING OFFICER: Because I notice the objection, your objection to the union's statement is that they misrepresented the fact as to base rates and time standards, with the further condition that you didn't have the proper time in which to answer. Now, had this matter come up prior to June 4th when the Company Exhibit 2 was received by the company so that you answered it in this letter of May the 13th?

THE WITNESS: The only time I could specifically remember that anything came up was when I heard indirectly that at one of the campaign meetings they had that. They had mentioned that the base rates were better.

HEARING OFFICER: So prior to the 13th you knew that there was some representations being made by the union that the time standards and base rates were better at Medina than they were here in Elyria?

THE WITNESS: Yes, sir.

HEARING OFFICER: And you answered that in your letter of May 13th, is that correct?

THE WITNESS: Yes, sir.

243 HEARING OFFICER: Do you have any questions, Mr. Stith?

MR. STITH: Yes, sir. I do on that point.

REDIRECT EXAMINATION

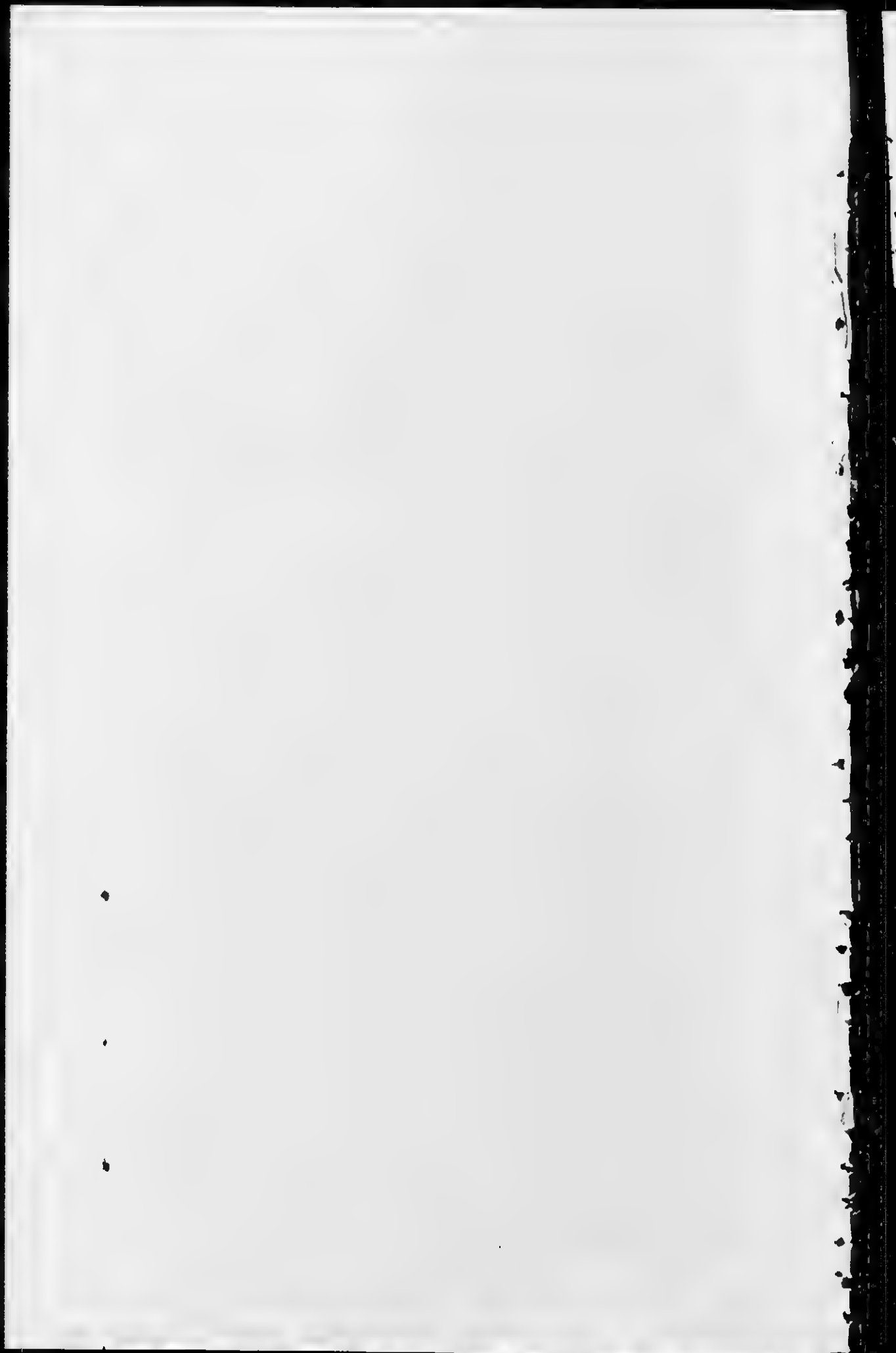
By Mr. Stith:

Q. You testified on direct examination, Mr. Lindsay, that you had no knowledge of any comparison? A. Any direct comparison I had no knowledge. I did mention to the Hearing Officer that I heard indirectly that at one of the campaign meetings there had been a statement made by someone from Medina that the rates were better.

Q. Did you feel then that the letter of May 13th that the Hearing Officer referred to answered the question that was posed in the union's last minute letter, the undated letter which is Company Exhibit 2? A. The union's letter hadn't been written at that date.

Q. I realize that. But the Hearing Officer's question was, whether you felt you had answered the question earlier? A. Absolutely not. There was no direct comparison at all. Actually when the union's letter that we objected to came out with a direct statement that the base rates were better and we could directly compare the union contract with our handbook and see that 28 per cent of our employees on incentive that there was no comparison. They were higher in every case. Also in some cases on
244 the non-incentive. So this was the time that we really got upset about it.

* * * * *



245

Americana Motel,
Elyria, Ohio
Friday, September 3, 1965

* * * * *

246 MR. STITH: We have, Mr. Hearing Officer, put the intervening time between the close of the last day of hearing and today to good purpose in preparing for you, as you requested, a detailed report covering the two pay periods that were given to us for purposes of comparison. The one payroll period ending May 30, 1965 and the other ending June 6, 1965. We have copies of these for counsel for the Petitioner and copies for you. We have, of course, Mr. O'Dell here who can explain — let me just give the preliminary explanation.

That they are in four sets. Two sets apply — the headings indicate — with no objection I assume from Mr. Schwarzwald — Luxaire, Incorporated, and the other one, The Henry Furnace Company of

247 Medina.

The major headings, as you will note across the top, show the Department Number; Clock Number; Job Classification; Actual Hours; Base Hourly Rate; Add On Rate; Base Pay; Premium Pay; Total Pay; Average Hourly Rate less Overtime; Total Minutes Earned and Day Work Minutes.

I would like to direct your attention also to the Exhibits relating to The Henry Furnace. As you will note there the Classifications are given on the initial pages. At the tail end of each one of those Exhibits are the actual names of the persons involved. For example, for the Payroll Period ending May 30, 1965 Department Number 10, Clock Number 463, Millwright A. Now, the name of that person if the Union would like to check or if the Hearing Officer would like to check is at the tail end where we have the Clock Numbers by Department at The Henry Furnace, in The Henry Furnace Exhibit that is.

Now, contrasted with that the Luxaire, Incorporated Exhibits show the Classification over the list of

names so that they appear in conjunction with that.

Now, as the testimony will indicate there is one other difference that had to be made in the headings. That is, The Henry Furnace Company Exhibits have a title Add On Rate whereas the Luxaire, Incorporated Exhibit does not. This is because of the fact that the shift premium is added at the Henry Furnace
248 Company after the computation of incentive earnings. Whereas, at Luxaire it is added into the computation of the incentive earnings.

With that brief introduction I am sure that we can answer any other questions that you may have.

HEARING OFFICER: Off the record.

(Discussion was had off the record.)

HEARING OFFICER: On the record.

(The documents above-referred to, marked Employer's Exhibits No. 8-A, 8-B, 9-A and 9-B, for identification.)

* HEARING OFFICER: We will take a short recess.

(Short recess.)

HEARING OFFICER: On the record. I understand Mr. Stith that you will call Mr. O'Dell now as a witness to offer Exhibits 8-A, 8-B and 9-A and 9-B?

MR. STITH: Yes, sir. We will be willing to have Mr. O'Dell take the stand.

* * * * *
THEODORE W. O'DELL

* * * * *
DIRECT EXAMINATION

249

By Mr. Stith:

Q. Mr. O'Dell, I hand you what has been marked as Company Exhibits 8-A, 8-B, 9-A and 9-B, would

you please identify these Exhibits and state their relationship to this case? A. Well, they are Exhibits which the Hearing Officer requested that we submit which gives more detailed information regarding each and every employee of the Luxaire, Incorporated Plant and The Henery Furnace Company Plant at Medina for all incentive classifications and non-incentive classifications for weeks ending 5-30-65 and 6-6-65.

Q. How was this information obtained, Mr. O'Dell? A. Well, naturally it was quite a large job. I supervised the entire makeup of this and have checked it out thoroughly since then.

Q. Where was the information taken from? A. From actual payrolls of these particular weeks involved, the company records.

MR. STITH: I offer these Exhibits in evidence.

* * * * *

250 VOIR DIRE BY MR. SCHWARZWALD

* * * * *

251 HEARING OFFICER: Mr. O'Dell, is it your testimony that the overtime is excluded from the average hourly rate on Exhibits 8-A and 8-B and 9-A and 9-B?

THE WITNESS: I did not say that, sir. As far as the average hourly rate, yes. You strictly have reference to average hourly rate?

HEARING OFFICER: Yes.

THE WITNESS: Yes, this is excluded.

HEARING OFFICER: Where is it included then?

THE WITNESS: Pardon?

HEARING OFFICER: Where is it included if it is?

THE WITNESS: It is not included in either 9-A or 9-B. In Exhibits 8-A and 8-B it is included in the total pay figure only for non-incentive classifications.

By Mr. Schwarzwald:

Q. You said in 8-A and 8-B it was included in the total pay? A. On non-incentive classifications
252 only where it says total pay. The overtime is included in that figure only. This is just due to the fact that the man had 42.5 hours. You could understand that his base pay was \$108.38 and his total pay was \$11.62 which indicated the overtime figure.

Q. You are saying overtime is not included on non-incentive classifications in Exhibits 9-A and 9-B? A. That is correct.

Q. Even under the total pay? A. That is correct.

Q. Now, so that the record may be clear, on Exhibits 9-A and 9-B you have a heading called Shift Premium Rate, correct? A. That is correct.

Q. And you have a heading on 8-A and 8-B called Add On Rate? A. That is correct.

Q. Both of those refer to shift premiums, am I right? A. I don't believe it is referred to as such in Medina.

Q. Do you know what a shift premium is, Mr. O'Dell? A. Certainly.

Q. Don't both of those headings refer to shift premium? A. I said in my opinion no. That is why we have it stated on there Add On Rate and Shift Premium Rate.

Q. That is in your opinion you said? A. That is in my opinion, yes, sir.

253 Q. We are clear, are we not, that both of the headings referred to, Add On Rate and the Shift Premium Rate refer to money earned for working on the second or third shift, is that right? A. This is what I will agree, yes.

Q. Have you ever made this sort of study before from the company records? A. Certainly.

Q. Precisely this type of study? A. Probably not exactly like this, no. I have made wage surveys in the past.

MR. SCHWARZWALD: I have no other questions.

HEARING OFFICER: Mr. O'Dell, as I recall you earlier testified that, giving a definition of a base rate, that at the plant in Elyria the base rate consisted of the hourly rate plus the shift differential.

THE WITNESS: Correct.

HEARING OFFICER: Then it would seem that you would have two base rates at the Elyria Plant, one for the person on the first shift which included no shift differential, you would have a second base rate for the person on the second shift, and a third base rate actually for the person working on the third shift, isn't this correct?

THE WITNESS: That is correct, sir.

HEARING OFFICER: So you have three different base rates at the Elyria Plant?

254 THE WITNESS: That is correct.

HEARING OFFICER: The wage policies for both the Elyria Plant and the Medina Plant are set by whom?

THE WITNESS: Well, at the Medina Plant it is through negotiations.

HEARING OFFICER: So far as the company is concerned who determines that, is that done by the President of the company, do you have any part in it?

THE WITNESS: I have no part in the Medina Plant operation. I would say the Plant Manager and Mr. Miller the Personnel Director and Mr. Stith our attorney. Naturally Mr. Lindsay would have the final say so on a thing of this nature.

HEARING OFFICER: Mr. Lindsay has the final say so in both plants, is that correct?

THE WITNESS: I would say so, yes, sir. Again, I would not reprimand him.

* * * * *

258 HEARING OFFICER: I will overrule your objection, Mr. Schwarzwald, and admit these Exhibits, to the extent that they go to the issue before us. That is, whether or not the base rates are higher at Elyria or at Medina. Company Exhibits 8-A, 8-B and 9-A and 9-B are received into evidence.

* * * * *

259 RICHARD MINNICH

* * * * *

260 DIRECT EXAMINATION

By Mr. Stith:

Q. Mr. Minnich, where are you employed?

A. Luxaire, Incorporated.

Q. How long have you been working for Luxaire?

A. Twenty-four years this past April.

Q. What is your present capacity? A. Time Study Engineer.

Q. As time study engineer, does your work, would your work be confined to Luxaire Plant in Elyria? A. Definitely, yes.

Q. I hand you what has been marked as Company Exhibit 7 which has been rejected as evidence in this case. With your testimony we would like to have established the relevancy and materiality of this Exhibit to this case. Looking at that Exhibit, Mr. Minnich, can you tell me what this purports to show?

A. This 3-tube 75 unit and this 4- — this 14.22 refers to the packing, fitting and welding of a pouch used for those three units which is identical with what Medina does do. Their rates to the right is what they pay and the comparison between the two pays at the two shops.

Q. When you say rates, are those expressed in terms of dollars or in terms of minutes? A. This is

261 minutes only.

Q. Minutes only. But those minutes are used to determine the incentive earnings? A. Their pay, yes.

Q. How would that operate? A. Well, base pay over 60 determines how much each individual gets per minute and then that is multiplied times these minutes to determine his earnings.

Q. Well, could you give an example, Mr. Minnich, of how the pay would differ between Elyria Luxaire and the Medina plant on this basis? A. Well, comparing ours of 14 and theirs of 11, if an individual had \$1.50 base pay which would give him \$.025 per minute, you multiply this \$.025 times the 14 at our plant and times the 11.60 at their plant which would give them their earnings per unit.

Q. Then the earnings per unit on that basis would be less at Medina than at Elyria? A. Well, \$.025 times 14 is \$.35 at Elyria and \$.025 at 11.60 would be somewhere in the neighborhood of \$.29 more or less compared to \$.35 at our place.

Q. How are these minute values established?
A. By observing and arriving at rates for these various operations.

Q. Do you call that process of observing anything, what is that? A. (No response.)

262 Q. You said by observing, what is the process that you use? A. Oh — clocking or timing.

Q. Timing? A. Yes.

Q. Then this would be a timing study or time study? A. Definitely.

Q. These minute values then are based on that?
A. Definitely, yes.

Q. Was there any reason to your knowledge why the weld assembly jobs that appear on this Exhibit were used by the company? A. Because they are

identical in nature. Therefore we used them for a comparison.

Q. Are there many other production jobs with minute values at the Luxaire Plant? A. There may be some that are similar but not identical.

MR. STITH: That is all.

HEARING OFFICER: Mr. Schwarzwald?

CROSS-EXAMINATION

By Mr. Schwarzwald:

Q. Tell us once again exactly what operations are performed in the minutes in Company Exhibit 7?

263 A. This is pack, fit, welding the pouch on the flue of these 3, 4, 5 and 6-tube elements.

Q. Tack, fit and weld the pouch and flue. Is there a pouch and flue for each tube or just one pouch? A. Yes, there is one for each tube. In other words, there would be 3, 4, 5 and 6.

Q. So the minutes here in the first line are the minutes for doing welding, fitting, tacking 3 pouches and the 3 flues, is that right? A. Yes.

Q. And 3-tube refers to what? A. A 75 or each tube is 25,000 BTU.

Q. And what is a tube? A. A piece of metal approximately 17 by 30 and they are welded together to make a tube of 18 gauge material. There is a pouch and tube that fit over these tubes that is welded to these sections.

HEARING OFFICER: That is 17 by 30 inches.

THE WITNESS: Yes. The weld isn't that, no. I mean there is a pouch and a tube that fits over these two sections and it is fitted and welded to these sections.

By Mr. Schwarzwald:

Q. Mr. Minnich, you said that you only work at the Elyria plant? A. Yes.

264 Q. You said that you worked there twenty-four years? A. Yes.

Q. How many years — what is your title now?

A. Time Study Engineer. That started in '52. I am not certain, approximately thirteen years.

Q. You hold an engineer's degree? A. No, I do not.

Q. What training do you have for this position?

A. I took MTM started — studies at Cleveland through Pittsburgh. Passed their course.

Q. What is MTM? A. Time Measurement Methods — Methods, Times, Measurements. It is a course for setting standards.

Q. How long was that course? A. Six weeks course, two days a week.

Q. Anything else? A. Nothing.

Q. Your formal education other than this goes how far? A. High school, Elyria.

Q. Now, sir, how did you obtain the rates for Medina that you show in this Exhibit? A. From Mr. Navratil. He is the Time Study Engineer at Medina.

Q. Mr. Navratil? A. Yes, Navratil.

265 Q. You called him? A. Yes, we compared it.

Q. You did not examine any records or books at Medina? A. No, not actually. He gave me his material and we put the two comparing rates down on a sheet.

Q. Now, sir, how many designations of minutes you would estimate you would have at the Elyria Plant, how many different rates? A. Various operations that would be hard to say. But it would be over 5000 and possibly less than 10,000 though.

Q. You estimate between 5000 and 10,000?

A. Yes.

Q. You have any idea how many there are at the

Medina Plant? A. I couldn't even give you a figure referring to that at all.

HEARING OFFICER: Would you clarify that 5000 to 10,000 for me?

THE WITNESS: It is various standards we have throughout the factory.

HEARING OFFICER: Is that on different jobs?

THE WITNESS: On only of the various jobs through the various departments throughout the shop.

HEARING OFFICER: All right.

266 By Mr. Schwarzwald:

Q. Just a little further. In other words, what we are talking about if we understand each other, your employees working on incentive — A. Yes.

Q. — maybe earning incentive based on the minutes dealing with any one between 5000 and 10,000 different operations? A. Definitely, yes.

Q. Each minute rate is a job which probably within a course of a year at least somebody works sometimes? A. Normally, yes. Some more frequent than others though depending on the volume of work.

Q. Now, in preparing this Exhibit, did you make any side by side comparisons with those 5000 to 10,000 rates with the rates, with the minutes specified at the Medina plant? A. We have made some, yes.

Q. I said in preparing this Exhibit, did you make any side by side comparisons? A. Yes, we did.

Q. You sat down with both sets of records?
A. I sat down with our records and checked with Ed on his records for various operations, yes.

Q. Various operations. Did you check all of the 5000 to 10,000 rates? A. Definitely not. There wouldn't be any comparison — I mean we make certain things that they don't make at all at Medina.

267 Cooling and various things that they don't have anything to do with over there.

Q. How many of your operations have to do with manufacture of gas furnaces? A. Possibly half of the operations.

Q. So now we are talking as an estimate between 2500 to 5000? A. It is very possible, yes.

Q. They do make gas furnaces at Medina?
A. Yes.

Q. Did you compare the 2500 to 5000 rates?
A. Well, there again — I mean, their units are definitely different than the units we make.

Q. You are not answering my question, Mr. Minnich. Did you compare the rates, the 2500 to 5000?
A. Definitely not.

Q. Do both gas furnaces at both plants have gas burners? A. Definitely do, yes.

Q. Both have blowers? A. Primarily theirs are direct and ours are belt driven. That is the primary difference as far as the blowers are concerned.

Q. What do you mean by direct blower? A. Direct drive I mean. It is driven by a motor inside of the blower whereas the belt drive has a motor sitting
268 outside with a belt on it.

HEARING OFFICER: Both are motor driven though?

THE WITNESS: Ours are motor driven and primarily makes a direct drive. They are both motor driven.

HEARING OFFICER: Both are motor driven but it just a question where the motor is located either inside or outside of the blower, is that correct?

THE WITNESS: Definitely.

By Mr. Schwarzwald:

Q. Now, do the plants make controls, do they

buy them? A. That is a purchase item.

Q. And they are installed? A. Yes. Although they may vary between the two factories also.

Q. Do you know if any employees have worked for these Elyria rates shown on here within the last three months? A. They work on them continuously, yes.

Q. This is the rate by which they are paid? A. Yes.

Q. For that work? A. Right.

Q. Is it not part of another operation? A. This is part of an over-all welding operation, yes. They are paid, this portion of it they are paid for this, for that job.

269 Q. Do they receive a total number of minutes for the whole job which includes this number of minutes? A. Yes, definitely.

Q. And their pay is really figured on the total number of minutes? A. Yes, it is. For the operation of the whole unit, yes.

Q. So no one is paid this figure shown in this Exhibit? A. No. But the reasoning behind this —

Q. You have answered my question. Your counsel will have ample opportunity I assure.

MR. SCHWARZWALD: No further questions.

REDIRECT EXAMINATION

By Mr. Stith:

Q. Mr. Minnich, you say that you worked for the company twenty-four years? A. Yes, sir.

Q. And of that twenty-four years you have been in time study since approximately 1952? A. Yes.

Q. What work did you do at the plant prior to that just generally? A. Before I went into the service in '41 I worked out on press breaks. I did that until '48 when I came into the personnel office. In '52 I went into time study.

270 Q. From your knowledge of the product manufactured at Elyria Luxaire and Medina, could you tell us why this Exhibit was prepared using this weld assembly and not others included in this 5000 to 10,000 minutes? A. Primarily because this portion of that operation is identical. Beyond that point we may have baffles and other items that may enter into this operation but does not show a true picture.

Q. Now, you stated that this was merely one element of the time study involved in the weld assembly — A. Yes.

Q. — and that there are other — A. Yes.

Q. — to make up the total? A. Definitely.

Q. So what would be the result if the employees' efforts at Elyria were the same as they were in Medina using these minute values for this element?

A. Well, their earnings are going to be between 10 and 15 per cent greater.

Q. Where? A. At Elyria.

MR. STITH: That is all, Mr. Tuk.

HEARING OFFICER: I notice the caption at the top says, Standard Minutes Including Fatigue, Personal and Incentive Allowances. How much of this time
271 on 3, 4, 5, 6-tube assembly is allowed for fatigue?

THE WITNESS: 7 per cent fatigue and 5 per cent personal or 12 per cent total.

HEARING OFFICER: What about at Medina?

THE WITNESS: That I am not at liberty to say because I don't know.

HEARING OFFICER: So that a person's earnings would be reduced by that 12 per cent, would it not?

THE WITNESS: No. This is what we pay and this includes this 12 per cent. This includes the 12 per cent that we are referring to.

HEARING OFFICER: You mentioned that there were some other jobs that are similar but not iden-

tical, how close was that similarity and what were those jobs?

THE WITNESS: We have the sheet to refer to those if it pleases.

MR. STITH: It is not in as an Exhibit. He was asking if you could recall from memory.

THE WITNESS: We have some operations, yes. But I could refer to from memory if it is necessary, yes.

HEARING OFFICER: Do you plan to put in other testimony, Mr. Stith, as to these?

MR. STITH: No. We are only concerned with those that are similar because the testimony is that there are dissimilarities with respect to others. So
272 consequently if we are making comparisons we should endeavor it seems to us to compare apples with apples.

HEARING OFFICER: How many jobs did you check at both plants to arrive at this figure that there was just one job that was identical between the two plants?

THE WITNESS: Would you phrase that again, sir?

HEARING OFFICER: How many jobs did you compare in both of the plants in order to arrive at this figure that there was only one job that was identical?

THE WITNESS: We spent considerable time making comparisons to see if we could come up with anything identical and we couldn't.

HEARING OFFICER: How many jobs did you compare?

THE WITNESS: Primarily welding and assembly operations.

HEARING OFFICER: How many jobs did you compare?

THE WITNESS: I would say from — some 25 or 30.

HEARING OFFICER: You say there — well, how many jobs do you have in each plant that involved the building of a furnace?

THE WITNESS: Now, you have the cabinet which are several more than the welding; then the assembly is a combined rate. Primarily the biggest portion of our rates are in the casing department.

273 HEARING OFFICER: What I am trying to determine is simply this, how many jobs are there and how many jobs did you compare?

THE WITNESS: We compared wherever we thought there was any possibility of similarity. That is what we did.

HEARING OFFICER: Can you be more specific as to the numbers.

THE WITNESS: We went through his operations trying to compare them and get identical panels or pieces so we could use an identical comparison and there were none because their casings are definitely different than ours. We had to get up to the welding portion which was identical.

HEARING OFFICER: How many jobs did you compare, 1000, 1500, 2000?

THE WITNESS: I would say primarily between the SU and the GS Models which are our large volume items. It wouldn't run to 400-500 operations.

HEARING OFFICER: You compared about 400-500 operations between the two plants and you came up with only one which was identical?

THE WITNESS: Yes.

HEARING OFFICER: And you have some 2500 to 5000 operations?

THE WITNESS: Yes. But they would be on smaller items, volume items, and we didn't enter into that field.

274 HEARING OFFICER: Any one have any further questions?

MR. STITH: No further questions.

MR. SCHWARZWALD: Yes, I have some questions.

RECROSS EXAMINATION

By Mr. Schwarzwald:

Q. Mr. Minnich, do you have any idea what the fatigue and personal time allowances are at Medina?

A. I do not.

Q. What is the phrase incentive allowances?

A. This 14.22 includes only your fatigue and personal, 12 per cent, and the incentive that was studied and allowed in this rate.

Q. What does that mean incentive studied and allowed? A. Whatever the observer took at this period of time and allowed a certain number of minutes with a performance on top of that and then your 12 per cent is over and above that.

Q. Isn't it the purpose of time study to find out what average or fair production for time would be and whatever is made over that is the incentive?

A. Say that again please?

Q. When you time study a job, aren't you attempting to set what a fair average rate would be and anything that is made over that is to be the incentive?

MR. STITH: I object. Mr. Tuk, there has been no question about the fairness and unfairness of rates
275 in this entire proceeding.

MR. SCHWARZWALD: What does this question have to do with that? I am trying to get the method so that I could understand what the Exhibit means.

HEARING OFFICER: I think Mr. Stith's objection is to the word fair.

MR. STITH: That is right.

HEARING OFFICER: Do you want to rephrase your question, Mr. Schwarzwald?

MR. SCHWARZWALD: I will try. I have asked the witness for his explanation and that didn't help.

By Mr. Schwarzwald:

Q. When you time study, aren't you attempting to get an average rate of production? A. Try to get a fair day's work for a fair day's pay.

(Laughter)

MR. STITH: That answer was not responsive to the question.

By Mr. Schwarzwald:

Q. What do you do when you do time study a job, Mr. Minnich? A. We observe the length or period over a period of time and observe how long it takes to do this operation. Any number of given minutes observed for the performance on it.

276 Q. What does performance mean? A. That is what speed this operator is going at or doing his work at.

Q. And then what? A. Then we arrive at this rate and add the 12 per cent on top of it and that is our standard by which we pay the \$0.25 or whatever to his base pay.

Q. So what does the phrase incentive allowance mean now? A. That is the time that we allow on the incentive.

Q. Are you saying that is the 88 per cent, the minute time? A. Accordingly, yes. Because that is the incentive portion plus 12 per cent for your personal and fatigue.

Q. I see. That other 88 per cent is called the incentive allowance? A. Yes.

Q. Now, sir, you testified you compared primarily assembly and welding operations, is that correct? A. Primarily, yes.

Q. Did you compare any other operations?

A. As I said we went over the casing but we couldn't find anything similar so we didn't, we couldn't do anything with that.

Q. What do you mean by the casing, sir? A. That is the portion of rounds to your element or your
277 welded section.

Q. I think we now know what a casing is. What do you mean by referring to the casing, isn't that an assembly operation, Mr. Minnich? A. Casing? No. When we assemble we put this element and everything in the blower into this casing. That is the assembly operation. That is completing the various parts together.

Q. What do you call the putting together of the casing? A. That is a portion only of your element and blower and everything else. It isn't a separate part by itself. Only the fabricating of these various parts would make this casing.

Q. Doesn't the casing have to be assembled?
A. Not separately.

Q. Don't the panels have to be put together?
A. Yes.

Q. Isn't that an assembly operation? A. Not by itself, no.

Q. What kind of a worker does that work?
A. This is done on a line. We put portions on this line and build it up and this casing is the last item to be put around the unit. Then a carton goes over and it is ready for shipment. But that is just a portion of the job.

Q. Aren't those people who put the casing on called assemblers? A. Yes.

278 Q. Thank you. Now, what other operations did you compare then? A. As I said primarily the GS and SU Models which are a volume item.

Q. And you did the welding and assembly operations? A. Yes.

Q. Anything else? A. As I said we checked the casing portions that go into this but there was nothing similar so we didn't use that.

Q. What kind of employee makes the casing portion that you are talking about? A. These are press operators primarily, machine operators possibly on your sheets, A and B.

Q. You say you checked now how many machine operator classifications, how many machine operator classifications did you check? A. Oh, we don't do it by operator. It is by operation.

Q. Then my question, how many operations? A. Well, there you will have some odd 200 operations primarily for each casing but they aren't identical. The two plants are not identical in setup so therefore we didn't use any of them.

Q. Are they similar? A. That I can't say because I am not that familiar with Medina's operation.

279 Q. What standards or criteria would you apply to arrive at the conclusion that they were identical?

A. If the part was identical in size and the same operation was done to this part.

Q. Part was identical in size and the same operation, correct? A. Right.

Q. Now, the machines do punching? A. Punching.

Q. Breaking? A. Breaking.

Q. Anything else? A. Piercing, notching primarily. Then we have spot welding afterwards.

Q. Notching, piercing and punching are different? A. No, they are the same.

Q. Punching and piercing and breaking?
A. Breaking, that is right.

Q. Perhaps you better explain each of those terms for us? A. Piercing is putting a hole in a piece; breaking is putting right angles or any kind of an angle on this piece of material; notching would be taking a piece off of this panel, removing a corner primarily or putting holes in there.

Q. Is there any operation wherein pieces are sized or do you buy them already sized, is there any
280 pressing out part of a sheet of metal or anything like that, is that done? A. What do you mean?

Q. Suppose you have a 2 by 3 foot piece and you want to cut it down in size, punch out a part of it, is that done or do you buy it the size you need? A. We have slitting equipment that cuts this material down to size. It is also put through shearing which you also have to cut it down to an exact size before it goes into the presses.

Q. What kind of employees do slitting and shearing? A. What are they referred to, Ted? Are they machine operators?

HEARING OFFICER: If you don't know the answer, Mr. Minnich — let's put it this way. This testimony is supposed to be yours and not any one else's. Due to that fact you are not permitted to ask any one else for the answers.

THE WITNESS: Thank you.

By Mr. Schwarzwald:

Q. You don't know. A. I do not know.

Q. At any rate I take it then that you did not compare any of these slitting or shearing jobs between your two plants? A. I did not. Primarily there is not slitting done.

Q. Thank you. One question at a time, sir, and we will get along just swell. Will you explain for the
281 record now what you mean by slitting and shearing? A. Slitting is material that comes in a coil and it is cut to width. Then it is blanked off to length in automatic equipment.

Q. Cut to width and blanked off? A. Cut off or blanked off.

Q. You say that is automatic equipment?
A. Automatic equipment, yes.

Q. Do the employees — automatic equipment does both, cutting the width and cutting to length?
A. Yes.

Q. Are those employees working on incentive?
A. Yes.

Q. Do you know what their job title is? A. I do not know exactly their job title.

Q. What do you call them? A. They would be machine operators.

Q. And what is shearing? A. That is cutting some of this — some of this equipment is not exact in size and cutting it down to the exact size for the various units.

Q. That is done by hand? A. By hand, yes.

Q. Also on an incentive basis? A. Yes.

282 Q. You say that you made no comparison between slitting and shearing job between the plants?
A. There is no comparison because we are the only ones that have the slitting equipment.

Q. What about shearing? A. We did not make any comparisons on shearing.

Q. No comparisons on shearing? A. No. We did not.

Q. Do you know if shearing is done at both plants? A. I am not certain but I believe so.

Q. Do you have any idea how many rates at your plant apply to shearing operations? A. For each panel that we make it would vary somewhat but it would probably be within 10 per cent of these totals that I gave you previously.

Q. I don't know if you understood my question. How many operations, how many minutes rates would you have for shearing? A. Probably 500 to 1000.

Q. 500 to 1000 shearing alone? A. Yes.

Q. Now, on what basis are those rates set?
A. Primarily by area of material.

Q. Square or something or other? A. Yes.

283 Q. Square what, sir? A. Inches.

Q. Square inches of material? A. Yes.

Q. Do you know if they are set the same way at Medina? A. I do not know.

Q. Now, turning to the notching operations, did you make any comparison on notching? A. We attempted to, yes. But there again the material is not the same size and was not identical so therefore we did not use it.

Q. You say the material is not — A. Exact size.

Q. Not exactly the same size? A. Yes.

Q. How much off would the closer piece be that you found? A. I would say 10 per cent.

Q. Now, notching is done on the side panels and casing? A. We have a tooling that pierces and notches complete in one operation at Elyria.

Q. Is the same tool used at Medina? A. I do not know.

Q. Do you — A. I know it isn't for our same identical operation because our side panel is different from their side panel.
284

Q. Did you — I'm sorry, but I have forgotten the name of the gentleman, the time engineer at the other plant. A. Ed Navratil.

Q. Did you ask Mr. Navratil whether piercing and notching was the same? A. I did not.

Q. Did you discuss piercing and notching at all?
A. Yes, we did on various panels.

Q. Has piercing been done separately from notching at Elyria? A. Definitely.

Q. Or is there some work that is not done on the machine as to both of them, is that right, or are there some pieces that require only one operation?

A. Some only require one operation. Notching can be done on the press or a press break.

Q. Did you attempt to compare any pieces that require only the one operation? A. We attempted to, yes. We couldn't find any similarity.

Q. That were identical? A. Right.

Q. Is that your testimony? A. Yes.

Q. You said the place where they were not identical was the area, is that correct? A. Yes.

285 Q. We are talking now about side panels on furnaces — A. Yes.

Q. — and you say there was a difference of 10 per cent in the area? A. I would say, yes.

Q. No difference in the gauge? A. I believe it is all 22.

Q. The sole difference was the area? A. Right.

Q. How about breaking, did you attempt any comparisons in breaking? A. We didn't have anything identical so we didn't use it.

Q. What standards of criteria were you using for identical on breaking? A. The same number of breaks. Whether the same operations were done identical and we could not find any.

Q. Do you know if any breaking jobs were sent from Elyria to Medina? A. Say that again?

Q. Do you know if any breaking jobs were sent from Elyria to Medina? A. It is possible. Over a period of years, yes.

Q. You don't remember anything specific? A. I
286 believe that they have made some of the units
that we have made in the past.

Q. Do you know what units those are? A. SA I
believe. Possibly the A series, SA series.

Q. Now, let me back up. By units you mean
completed furnaces? A. Yes.

Q. You said that Medina made them before Elyria
or after? A. Afterwards I believe this was.

Q. After Elyria, same units? A. Yes.

Q. What were those units? A. A and SA. SA is
out at the present. I mean, it isn't a current unit.

Q. How long has it been out? A. Two years and
possibly three.

Q. And the A is still being made? A. Yes.

Q. Did you compare the — any of the operations
on the A between the two plants? A. I did not.

Q. And it is the identical unit? A. Yes. But
that goes back some period of three or four years.
We haven't done that lately.

Q. Where have they been done lately? A. Par-
287 don?

Q. They are still being manufactured, are they
not? A. Yes. We make them altogether at the
present time, at Elyria.

HEARING OFFICER: Just at the Medina plant?

THE WITNESS: Pardon?

HEARING OFFICER: Just at the Medina plant?

THE WITNESS: The A series we make alto-
gether, although in some cases I guess they have sent
them to Medina. But that goes back some period of
time.

By Mr. Schwarzwald:

Q. You mean they are still made at the Elyria

plant, is that what you are saying? A. Yes.

HEARING OFFICER: And they were made at the Medina plant?

THE WITNESS: We originated the units — and then —

HEARING OFFICER: Finish.

THE WITNESS: — because primarily because we couldn't keep up with the volume I believe it was sent there temporarily and then brought back again.

HEARING OFFICER: When was that?

THE WITNESS: As I said some period three or four years ago.

HEARING OFFICER: Did the time standards change in the past three or four years?

288 THE WITNESS: They haven't.

HEARING OFFICER: Your testimony is that the time standards for the A series in the past three or four years have not changed at the Elyria plant, is that correct?

THE WITNESS: Yes.

HEARING OFFICER: Has it changed at the Medina plant?

THE WITNESS: That I could not say.

HEARING OFFICER: Mr. Schwarzwald?

MR. SCHWARZWALD: Would you mark this as Petitioner's Exhibit 7.

(The document above-referred to, marked Petitioner's Exhibit No. 7, for identification.)

MR. STITH: May I see it please?

MR. SCHWARZWALD: Oh, I am sorry. Excuse me.

HEARING OFFICER: Mr. Minnich, you said that the A series was originally started at Elyria —

THE WITNESS: Yes.

HEARING OFFICER: — then because it was too much productionwise that you could not handle it, is that correct?

THE WITNESS: Yes.

HEARING OFFICER: And you shipped what, all of the work or some of the work to Medina?

THE WITNESS: Casings primarily. I am certain that is all.

289 HEARING OFFICER: At that time was there some work being done at Medina and some work being done at Elyria?

THE WITNESS: Both plants were in full production. But Elyria couldn't accommodate the volume I suppose and that is why they made the few casings for Elyria.

HEARING OFFICER: Were they both working on the same furnace?

THE WITNESS: As I say, this casing is only a portion of the unit. They would carton this portion and send it over.

HEARING OFFICER: But they were still making the complete furnace down there, weren't they, at Medina?

THE WITNESS: No. This is only a portion. This is the outside portion of your furnace that I am referring to. It goes out separately. This was a knocked down unit. It was not an assembled unit.

HEARING OFFICER: All the work back in Elyria now?

THE WITNESS: Yes.

HEARING OFFICER: Mr. Schwarzwald?

By Mr. Schwarzwald:

Q. You said that you supposed that it was sent

down there because there was too much production?

A. That would be my opinion, yes.

Q. Were you in any discussions at the time that the work was sent to Medina? A. Not that I can recall, no. Because that would be managements, pre-

290 rogative to send it down there to be made if they so desired.

Q. You were not consulted about it in anyway?

A. Not that I can recall, no.

Q. You personally had no knowledge as to the reason for the decision? A. No.

Q. Showing you what has been marked as Petitioner's Exhibit Number 7, do you recognize this at all? A. I do not.

Q. Is it a type of part that might be made in either the Elyria or Medina plant? A. Very possibly, yes.

Q. Have you ever seen anything like this called a brace or reflector brace? A. No. It isn't familiar with my Elyria operation.

Q. Now, looking at this piece, it has a long side and a short side for identification in the record, now, they are at right angles to each other, the operation making this right angle a breaking operation?

A. Definitely, yes.

Q. And the placing of this hole on the short side, that is what type of operation? A. Piercing or punching.

Q. Yes. These furnace casings that you said were similar but not identical. Just for the sake of
291 the record, what are the size ranges that we are talking about, are we talking about pieces of metal 2 feet by 3 feet to 4 feet by 6 feet? I am just picking out numbers. What range are we in? A. From small pieces possibly 1-1/2 inches and any size up to a piece 5 to 6 feet by possibly 2-1/2 to 3 feet wide primarily.

Q. We have that entire range? A. Yes.

Q. At both plants? A. Yes.

MR. SCHWARZWALD: No further questions.

MR. STITH: I have only one question not of the witness but of Mr. Schwarzwald. I would like to know as a matter of interest how they acquired a piece of property that belongs to the company? Also to inquire whether it is to be returned?

MR. SCHWARZWALD: I don't know that there is any need to go into that matter at the moment. Something that has been marked for identification and hasn't been offered in evidence at this point.

HEARING OFFICER: You mentioned some line work, Mr. Minnich, where furnaces are assembled as they go down a production line, is that correct?

THE WITNESS: Yes.

HEARING OFFICER: Did you make any time studies of the lines involved?

292 THE WITNESS: They are different so therefore there wasn't anything that was identical. Therefore, we didn't use it. The locations and various items enter into this. There wasn't anything that we could compare identically.

HEARING OFFICER: When you were manufacturing this A series furnace at Elyria, did you make a time study of the line there, the assembly line there?

THE WITNESS: This is a knocked down unit and sent out in cartons. It is not assembled.

* * * * *

293

EDWARD NAVRATIL

was called as a witness by and on behalf of the EMPLOYER and, having first been duly sworn, was examined and testified as follows:

HEARING OFFICER: State your name and address for the record please?

THE WITNESS: Edward Navratil; Medina, Ohio.

HEARING OFFICER: You are the time study engineer for The Henry Furnace Company, is that correct?

THE WITNESS: Yes.

HEARING OFFICER: Are you in fact an engineer?

THE WITNESS: Pardon?

HEARING OFFICER: Are you in fact an engineer?

THE WITNESS: Yes, I am.

HEARING OFFICER: Holding an engineering degree?

THE WITNESS: No, not a degree.

HEARING OFFICER: Will you give us a short resume on your qualifications or your training as far
294 as time study work goes?

THE WITNESS: I trained at Fenn College in Cleveland two years of night school.

HEARING OFFICER: What primarily were those studies?

THE WITNESS: Industrial Engineering.

HEARING OFFICER: Industrial Engineering?

THE WITNESS: Yes.

HEARING OFFICER: If you could, would you speak up a little louder please?

THE WITNESS: Yes.

HEARING OFFICER: You conducted the time study research at The Henry Furnace Company for Company Exhibit Number 7 I believe, is that correct?

THE WITNESS: That is correct, yes.

HEARING OFFICER: Are there any allowances for fatigue and/or personal reasons.

THE WITNESS: What do you mean by reasons?

HEARING OFFICER: In the computations for the Elyria plant there is a 12 per cent allowance as I understand it, is there a similar 12 per cent allowance at the Medina, in the Medina figures?

THE WITNESS: No. There is 14, sir.

HEARING OFFICER: Is that 14 per cent included in that time that is on the Exhibit?

295 THE WITNESS: Yes, sir.

HEARING OFFICER: The actual time to perform the weld assembly operations on the 3, 4, 5; and 6-tube unit would be reduced by 12 per cent at Elyria and 14 per cent at Medina, is that correct?

THE WITNESS: To get the actual time?

HEARING OFFICER: Yes.

THE WITNESS: Without the allowances?

HEARING OFFICER: Yes.

THE WITNESS: To get your allowed time, yes.

DIRECT EXAMINATION

By Mr. Stith:

Q. Ed, you said 14 per cent, does that apply to the entire plant? A. No, sir. That is just the welding department.

Q. Just the welding department? A. Yes, sir.

Q. What is the fatigue allowance for the balance of the plant? A. 12 per cent.

Q. Are you familiar with all the figures that are set forth on that Exhibit? A. Yes, sir, I am.

Q. Did you assist in the preparation of that Exhibit? A. Yes, I did.

296 Q. Did you do any research on it? Let me rephrase that. Did you work with Mr. Minnich on it? A. Yes, I did.

Q. What were you seeking as a result for that

study? A. We were trying to seek identical operations.

Q. Not similar? Are there any jobs that are similar but not identical? A. Could be similar but not identical, right.

Q. Were these the only ones that you found that were identical? A. Yes, sir.

Q. Consulting the Exhibit, Mr. Navratil, you will find that the allowance for the 3-tube, 4-tube, 5-tube and 6-tube at Elyria is higher than the allowance at Medina in minute values, is that correct? A. That is correct.

Q. Now, if this is identical work as had been testified by Mr. Minnich, can you say that it is identical work, how do you account for the fact that the minute values for identical work at Medina are different than at Elyria? A. It is strictly my judgment on that.

Q. Your judgment? A. Yes, sir.

Q. Do you do all the time study work at Medina? A. Yes, sir.

297 Q. What would be your estimate as to the number of jobs let's say of which we have rates at Medina? A. It would be in the hundreds.

Q. Hundreds? A. Yes, sir, hundreds.

Q. Once a job is studied and rated, does that rate remain in effect?

MR. SCHWARZWALD: Objection. I understood the purpose of this testimony was with regard to this Exhibit. I believe the statement was made that the company had rested other than dealing with this Exhibit. This seems to be much broader and an attempt to shore up part of the case long since closed.

MR. STITH: It is the method used by the company in determining time study standards. I believe this is relevant and material.

HEARING OFFICER: I will permit the witness to answer.

THE WITNESS: Can you repeat it?

By Mr. Stith:

Q. The question was: Once a rate is established through time studies, does that rate remain in effect?

A. It does until methods or changes of any type takes place. Then the job is restudied and other changes eliminated — or the change is eliminated.

Q. Are you familiar with the types of products manufactured at the Luxaire Plant in Elyria? A. No,
298 I am not.

Q. What method was used by you and Mr. Minnich to reach the information contained on that Exhibit? A. This was reached by time studies of these jobs as specified here, actual time studies of the job.

Q. Do you know of any other jobs on which the operations would be identical? A. No, I do not.

MR. STITH: That is all.

HEARING OFFICER: Mr. Schwarzwald?

MR. SCHWARZWALD: Yes.

CROSS-EXAMINATION

By Mr. Schwarzwald:

Q. Mr. Navratil, how did the time in the welding time at Medina get to be 14 per cent instead of 12?

A. That was established by other engineers before.

Q. You don't know about that? A. I continued on with it.

Q. Do you know if a union grievance had anything to do with it? A. Well, it was set up by my judgment what the fatigue should be on each job and personal allowance.

Q. Didn't you just testify that the 14 per cent was set up before you arrived? A. That was. Yes,
299 sir.

Q. That is what my question was directed to. I guess it wasn't clear. Now, when did you begin working as time study engineer — A. When?

Q. — at The Henry Furnace? A. 1945.

Q. You worked for the company before that?
A. Yes, sir.

Q. As what? A. Production worker.

Q. And what was your education prior to Fenn College courses that you mentioned? A. High school graduate.

Q. You said that this Fenn College was two years of night classes, is that right? A. Yes, sir.

Q. How many quarters or semesters does that amount to? A. It amounted to two years. Fall and Spring.

Q. Two years, two full college years? A. No. That is the Night School Division.

Q. Yes. Did they tell you how much that equals to a day school program? A. I do not know.

300 Q. Now, United Steel workers and its Local does represent the employees at the Medina Plant, is that right? A. Yes, sir.

Q. And the Union has access to the company's list of rates for jobs upon which men are actually paid, is that right? A. Yes, sir.

Q. Now, these rates appear in Company Exhibit 7, is any one actually paid based upon these rates in the Medina, any one paid for performing this amount of work, this amount of minutes? A. These are parts of the total operation, yes. They are part of the total operation.

Q. Payment is based on the total operation, is it not? A. This is part of the whole operation.

Q. My question is, that payment is based upon the total operation, is it not? A. Yes, sir.

Q. Thank you. You were in the room this morning when Mr. Minnich testified? A. Yes, sir.

Q. Are you familiar with the operations at the Elyria plant? A. No, sir.

301 MR. STITH: I object. He already answered. It is repetitious.

HEARING OFFICER: It is cross-examination. Overruled.

By Mr. Schwarzwald:

Q. So we may have it clear, how many rates on which people are paid, minute rates for which people are paid if they perform a certain operation do you have throughout the Medina plant? A. Hundreds.

Q. Is it thousands? A. I said hundreds.

Q. You mean it is under 1000?

MR. STITH: Off the record if I may?

MR. SCHWARZWALD: I will object to this.

HEARING OFFICER: Let the witness answer.

THE WITNESS: I said hundreds, sir.

By Mr. Schwarzwald:

Q. Does that mean that it is less than 1000?

A. Could be more.

Q. You don't know? A. No.

Q. Do you have any idea? A. No, sir.

Q. And yet — are there any other time study engineers at this plant? A. No, sir.

302 Q. You are the only one? A. Yes, sir.

Q. You have no idea how many rates you have in the plant, is that what you are saying, no estimate, no guess? A. (No response)

Q. Just answer the question. You don't have to look anywhere, Mr. Navratil.

MR. STITH: The witness has said hundreds.

THE WITNESS: I don't know.

MR. SCHWARZWALD: I ask that the Hearing Officer ask counsel if he has a proper objection to make it and not to interrupt the testimony of the witness.

MR. STITH: Well, I object.

HEARING OFFICER: Is there an objection?

MR. STITH: Yes.

HEARING OFFICER: What is your objection?

MR. STITH: The witness already stated several hundred.

HEARING OFFICER: This is cross-examination. I will permit counsel to proceed.

By Mr. Schwarzwald:

Q. Do you have any estimate as to how many rates there are on which people are actually paid in the plant? A. No, sir, I don't have.

Q. When was this Exhibit prepared, when did you get these figures together? A. The date?

303 Q. Yes. A. I can't give you that date.

Q. Can you give me any approximate date? A. Maybe in the last three or four weeks.

Q. Last three or four weeks? A. I don't remember that.

Q. Did you talk to Mr. Minnich in person or was it by telephone? A. In person.

Q. And that your conversations with him were within the last few weeks, is that right? A. Yes, sir.

Q. Just so we have it clear, we are talking a month, probably in that area? A. Yes, sir.

Q. Had you made any studies similar to that that went into this Exhibit before that time, had you

made any similar comparisons with Mr. Minnich before this Exhibit was prepared? A. No, sir.

Q. Do you know if any one else at your plant made any comparisons with time values and time rates at the Elyria plant? A. No, sir.

304 Q. Do you remember when the welding department was established at your plant? A. Probably 1954 I think. A year either way.

Q. And you say you were time study engineer since 1945? A. Yes, sir.

Q. Is it still your testimony that you didn't have anything to do with setting up the 14 per cent fatigue allowance in the welding department? A. Well, I was with another man at that time, an Industrial Engineer.

Q. You mean there were two engineers at that time? A. Oh, yes.

Q. How long has the other engineer been there, what years? A. I couldn't answer that.

Q. When did he leave, do you know? A. I still couldn't answer the year that he left.

Q. He was there when you started in 1945? A. Yes, sir.

Q. And left sometime after when, do you have any idea? A. No, sir, I don't.

Q. So before he left you did not do all the time study work, is that correct? A. Yes, sir.

Q. Now, sir, when you say that a job is identical, let's talk about a machine operator's job, what standards are you applying, what has to be identical
305 in a machine operator's job to be precisely the same operation? A. Everything. All equipment, all parts, speeds, feeds and everything. All conditions have to be the same.

Q. You say you heard Mr. Minnich's testimony this morning? A. Yes, sir.

Q. Was that testimony substantially accurate as to the comparisons that the two of you made? A. I couldn't answer that. Repeat your question?

Q. I say, was Mr. Minnich's testimony this morning accurate as to the comparisons which the two of you made to derive — A. These figures, sir?

Q. No. Total comparison you made to derive Company Exhibit 7? A. On these figures, yes, sir.

Q. My question was, was all the comparisons you made before you prepared that Exhibit with only four jobs, was he substantially accurate as to those comparisons? A. Yes, sir.

Q. And you both agreed on the reasoning as to why these were the only four jobs? A. Yes, sir.

Q. Your plant makes gas furnaces, does it not? A. Yes, sir.

306 Q. It makes burners? A. Yes, sir.

Q. Casings? A. Yes.

Q. Blowers? A. Yes.

Q. You install controls? A. Yes.

Q. Are your burners made as we learned here previously in units of 25,000 BTU, do you make one burner that is 25,000 and you put in two and two burners in a furnace is 50,000 and so on? A. Yes, sir.

* * * * *

MR. STITH: I would like to move, Mr. Tuk, that Exhibit 7 be admitted.

MR. SCHWARZWALD: Object.

HEARING OFFICER: Overruled. The Exhibit will be received into evidence.

* * * * *

307

WILLIAM TAGGART

* * * * *

DIRECT EXAMINATION

By Mr. Schwarzwald:

Q. State your name for the record, Mr. Taggart? A. William Taggart.

Q. Your position? A. I am a representative for the United Steelworkers.

Q. How long have you held that position?
A. Nine years.

308 Q. And what sort of work have you done just generally and briefly as representative? A. Well, just about all the duties in that line of work. I service Local Unions. I have been organizing and doing whatever is required.

Q. In servicing Local Unions approximately how many different plants, different units have you serviced? A. Well, that is pretty hard to state accurately because I might service eight or nine for a year or two and then there might be a change. I might be assigned other plants. I would say I've probably serviced twenty or twenty-five different Local Unions over nine years one time or the other.

Q. Now, organization work brought you in contact with different plants? A. Yes.

Q. Other than those you have serviced? A. Yes.

Q. Can you estimate just roughly the number of plants? A. You mean plants I have —

Q. Involved in organizing? A. Organizing?

Q. Yes. A. It is pretty hard to estimate. I would say probably twenty-five or fifty plants in the last two and a half or three years.

309 Q. Now, in working with forty-five to fifty-five plants you heard the use of the term base rates?
A. Yes.

Q. Would you tell us what base rate is meant in situations where you have heard it, and I am excluding for the moment the company's use of the term in

this particular plant in this particular proceeding?

A. Base rates normally meant the guaranteed rate for the incentive worker.

Q. Have you heard prior to this company's position that a base rate included shift premium?

A. I —

MR. STITH: I object. I believe Mr. Schwarzwald is leading the witness.

HEARING OFFICER: Rephrase your question.

By Mr. Schwarzwald:

Q. In your experience, Mr. Taggart, what has been the relationship between base rate as you explained it and shift premiums? A. Shift premium is usually an additional compensation for working the second or third shift.

Q. Is it part of the base rate? A. Well, I would say no.

Q. Now, to make it clear I want your experience in relation to these plants, have you ever come across a different situation than the one you have
310 described other than this company? A. None that I have had any services with, no.

HEARING OFFICER: Your testimony, Mr. Taggart, that this is the first time you have encountered the situation where the shift differential was added to an hourly rate to make up a base rate?

THE WITNESS: This is the first time, yes.

By Mr. Schwarzwald:

Q. Showing you now Company Exhibit 2 and directing your attention to the last paragraph on the first page of that Exhibit — A. Yes.

Q. — when you used — you wrote this letter?
A. Yes.

Q. All right. You used the term base rate in that paragraph? A. Right.

Q. What meaning did you intend, what meaning did you attach to the term as used there? A. I am referring to the incentive workers.

Q. Would you explain that a little more for us so that it is clear? A. Well, base rates and standards, as my statement there, base rates and standards has to do with the incentive workers. If a man
311 was on an hourly rate he wouldn't be involved in standards or in base rates in my way of thinking.

Q. What was the meaning of this term shift differentials to the term base rates as you used it here, or shift premiums? A. I was referring to the base rates of incentive workers. I was not referring to any shift differentials or anything else.

Q. You were speaking solely of incentive workers? A. Yes.

Q. In your experience in these plants, have you ever heard of a non-incentive worker who receives a base rate? A. No. I have always and my experience has been that they are hourly rated.

Q. In this paragraph you went on to write "and the standards are generally better because you see, we have a voice in setting them." Now, what were you referring to there, what did you mean by that? A. Well, all through our organizing campaign in this case we talked a good deal about grievance procedures and contracts in writing. I was referring to the fact that when a job, a standard or a time came up that we have a right in the Medina plant to grieve over any rate that we didn't feel was correct. This is what I was referring to. Because we have a right, we have a voice in it, we have a right to grieve over
312 it.

Q. Now, can you tell us how you came to write this letter, the background leading up to it? A. Yes. During the campaign there was a lot of literature put out by both sides. There was one particular letter which was put out by the company on the 13th I think —

Q. 13th of what, do you recall? A. Of May, I believe.

Q. Just a moment. Hold it there and we will see if you can identify that. I now show you Petitioner's Exhibit 5, is this the letter? A. Yes.

Q. Go ahead. A. Of course, I didn't know anything about the letter right away. It was sometime until, sometime after the letter came out that the fellows brought it to my attention. After I read the letter it seemed to me that it tended to give the people in the Elyria plant the opinion that they were so much better off than our plant in Medina. I felt that I would have to come up with some answer for them.

Q. When did you find out about the letter, do you remember? A. When did I find out about the letter?

Q. Yes. The May 13th letter, Petitioner's Exhibit 5? A. Well, I can't be — I assume it was on the 27th of May which was the time that I was down
313 to meet with some of the people here.

Q. You said that you thought that you had to answer it. Now, what did you do about it? A. Well, of course, when I read the letter I couldn't understand how these statements could be true. I, of course, had to then question some of the people on these things. I asked the fellows in Elyria, "What their base rates were?" I was told, "That they really had two base rates. \$1.52-1/2 and \$1.57-1/2. That everybody else other than those rates would be on an hourly rate." I then took the letter over to Medina and showed it to Mike Klimko. He read it and he said, "He couldn't understand it."

HEARING OFFICER: Who is Mike Klimko?

THE WITNESS: He is the President of the Local at The Henry Furnace. He said, "About the only thing I could tell you, Bill," he said, "I don't understand how they come by all of these statements. Our base rates are \$1.53 and \$1.58. They are higher than Elyria and generally our standards are a little better." So I used this in my statement.

By Mr. Schwarzwald:

Q. And that was the knowledge you had at the time you wrote the letter? A. At the time I wrote
314 the letter the only knowledge I had was information given to me either by Elyria employees or Mike Klimko at Medina.

HEARING OFFICER: Is May 27th the first time you went to Medina after the May 13th letter?

THE WITNESS: I think May 27th is when I got a copy of the May 13th letter. After that meeting I went over and stopped at Medina.

By Mr. Schwarzwald:

Q. Mr. Tuck's question if you were in Medina in between, were you in Elyria in between? A. No. I was in Elyria on the 13th and I was here on the 27th for a meeting with a group of the people.

Q. You were not in between, is that what you are saying? A. I don't believe that I was. I had several campaigns going at the same time.

Q. Now, did you make any further investigation of this problem before the election? A. I didn't realize there was any problem until after the election.

Q. I take it when the objections were filed?
A. Yes. When the objections were filed I arranged a meeting with some of the people here in Elyria on the 14th of June. I came down and I asked them again, I said, "This information you gave me of
315 \$1.52-1/2 and \$1.57-1/2, is that correct?"
I was told, "Yes, it is correct. There is a book that just came out. If you want to see the book, why, we will get it for you."

Q. And were you then given a copy of this?
A. I was given a copy of this.

Q. The book that you are referring to is Company Exhibit 4 which I am now showing you? A. Yes, that is it.

Q. What further investigation did you make?

A. I also, after that meeting, the same night, I went over to Medina and contacted Klimko again. I asked him, "If he was sure that his rates that he told me, \$1.53 and \$1.58 were true." He said, "Yes, that was true."

Q. Did you obtain anything from him? A. He gave me a copy of their contract.

Q. Is that Company Exhibit 3? A. Yes.

* * * * *

316

CROSS-EXAMINATION

By Mr. Stith:

Q. Mr. Taggart, I have a few questions that I would like to ask about your alleged misunderstanding with respect to base rates. You say that you serviced a number of Locals throughout your years as
317 a representative of the International, is that right? A. That is right.

Q. But you never did any work for The Henry Furnace Company at Medina? A. None whatsoever.

Q. None whatsoever. You stated also that you did not receive a copy of the Henry Furnace contract until June the 14th, is that correct? A. That is when I asked for it, yes.

Q. I would like to hand you what has been marked earlier as Company Exhibit 3 and what has been marked as Company Exhibit 4, one is the copy of the contract at The Henry Furnace Company, is that right. A. Yes.

MR. SCHWARZWALD: I suggest that we ought to use the official Exhibits.

MR. STITH: There is no difference.

By Mr. Stith:

Q. Now, directing your attention to Company Exhibit 3, at page 39, you will note that the heading is Appendix A, Schedule of Classifications and Rates, is

that correct? A. Yes.

Q. Now, what would be your understanding of a Schedule or an Appendix attached to a collective bargaining agreement that used those terms with respect
318 to non-incentive classifications where it says rates? A. Those would be the hourly rates.

Q. Well, the word hourly does not appear, does it, Mr. Taggart? A. Not on this page, no.

Q. The words guaranteed hourly rate does not appear, does it? A. Not on that page, no.

Q. Now, directing your attention to Company Exhibit 4, for the moment at page number 19, the non-incentive rates are described with the heading which reads, Non-Incentive Base Rate Schedule, is that correct? A. That is correct.

Q. Would it be your judgment as an expert in these matters since you have been so qualified that the Appendix A, Schedule of Classifications and Rates, Non-Incentive Classifications set forth on Page 39 of Company Exhibit 3 and the non-incentive base rates schedule set forth on page 19 of Company Exhibit 4 would refer to the same types of jobs in terms of wage payments? A. Well, I can't be sure of that.

Q. You have testified that you did not have a copy of the Company's Handbook until June 14th? A. That is right.

319 Q. And you did not have a copy of the Company's Contract with your Union at Medina until the same date? A. Right.

Q. Yet you wrote a letter in which you made the statement that base rates and rates are generally higher at Medina than Elyria? A. Right.

Q. How do you account for that — A. Based upon —

Q. Just a moment. — How do you account for that, Mr. Taggart, when a comparison of the non-

incentive classifications set forth on page 39, Company Exhibit 3, and the non-incentive classifications set forth on page 19 reveal that the same rates are higher at Elyria than in Medina? A. I was not referring to hourly rates in my letter. I was referring to incentive rates.

Q. You were aware of the fact, however, that there were non-incentive jobs at both plants, were you? A. I was aware that there was some hourly rated jobs at both plants, yes. This is —

Q. Are you asking the Board to assume that your term base rates as used in your letter was uniformly understood to mean being applicable to incentive only? A. I am not asking the Board for anything. I am simply stating what my reason for the
320 letter was and why I wrote it.

Q. You used the term base rates, and as you say, it applied only to incentive. How were the people at Elyria to evaluate that statement?

MR. SCHWARZWALD: Objection.

THE WITNESS: I think —

MR. STITH: I think it is proper. The cases, Mr. Tuk, clearly point out if we have a basis for an objection in these matters it is because the employees' freedom of choice was coerced at a time when they could not evaluate the accuracy of the statements made by the Union. There are a number of decisions on this point. I have asked the witness how he could expect the employees to evaluate the term base rate when he admits he thought it applied only to incentive?

HEARING OFFICER: I will permit the witness to answer.

THE WITNESS: I can answer it?

HEARING OFFICER: Answer it if you can.

THE WITNESS: Because I referred to base rates and standards. In my understanding people who

aren't on incentive don't work any standards. So they would naturally know that I was referring to incentive workers.

By Mr. Stith:

Q. But there are employees other than those on incentive, is this correct? A. Yes. I know this.

321 Q. There was testimony by the company there are 57 employees on non-incentive, were you aware of that, at Elyria? A. I wasn't aware that it was that many, no. My best knowledge was around 10 or 12 per cent of them.

Q. Now, turning for a moment to Company Exhibit 2 which is the letter in question. Mr. Taggart, you have already testified that letter bears your signature? A. Yes.

* * * * *

324 Q. To whom was the letter sent?

MR. SCHWARZWALD: I will repeat my objection.

MR. STITH: He has ruled on it. He said that you may answer.

MR. SCHWARZWALD: I think if we are going to have a ruling let's have a ruling from the Hearing Officer.

HEARING OFFICER: You have already testified, have you not, Mr. Taggart, that this is your signature that appears on the bottom of that letter?

THE WITNESS: Yes.

HEARING OFFICER: I will overrule the objection.

By Mr. Stith:

325 Q. To whom was the letter sent? A. It was sent to all the employees at the Olsen Company whom I had, the ones that I had the correct names and addresses for.

Q. Do you recall what date the letter was sent?

MR. SCHWARZWALD: Objection. Now, we are clearly getting beyond the scope. The purposes of this I think are quite obvious. Once again the company is trying to shore up its case when it has already rested. It is wholly improper. The company had its opportunity. I objected at the last sessions in this hearing. It knew what the Petitioner's position was in regard to this issue. This is no time to make more evidence and try to get more facts into this record. The day has passed.

MR. STITH: The purpose of this — as I understood it when I got a letter from the NLRB that the Hearing Officer was to investigate to find the facts. If that is the true objective of this hearing then it is pertinent to the hearing and relevant. Mr. Tuk, you as the Hearing Officer should have the facts. Just as the company complied with a request made to submit additional information when asked for. If it is the desire of the Union to try to deny that this letter was sent on such and such a date it would be clearly apparent it seems to me what the Union was attempting to hide. I merely asked the question: What was the date on which it was sent? He has testified that it is a letter over his signature; he has said he has
326 sent it to people who he had addresses. Now, this is certainly relevant to that, to find out when it was sent. This is one of the issues in the case.

MR. SCHWARZWALD: May I be heard for a moment?

HEARING OFFICER: Yes.

MR. SCHWARZWALD: The Union has nothing to hide in this case. But the rules of evidence that exist are very valid and are for very sound reasons. I'm sure the eminent employer's counsel is well aware that those rules of evidence ought to be respected here as well as in any other judicial type of proceeding.

HEARING OFFICER: Mr. Stith, inasmuch as it

appears that you are exceeding the scope of the direct examination with these questions I will sustain Mr. Schwarzwald's objection. However, I will permit you to examine this witness if you choose to make him your own witness.

MR. STITH: All right. When I get through with my other questions I will come back to this. I want to explore one bit further on this affidavit.

MR. SCHWARZWALD: Just so the record will show no acquiescence I will object to that procedure too. I will enter that objection.

HEARING OFFICER: Which one is that, Mr. Schwarzwald?

MR. SCHWARZWALD: I would object to the company being allowed to take Mr. Taggart as his own witness and therefore add to its own case after it
327 has rested. Which I think is what is being done in effect. I don't want no misunderstanding as to that position.

HEARING OFFICER: Overruled.

By Mr. Stith:

Q. Now, Mr. Taggart, were you contacted by any Board Representative after the election?

MR. SCHWARZWALD: Objection.

HEARING OFFICER: What is the basis for your objection, Mr. Schwarzwald?

MR. SCHWARZWALD: I don't see any materiality or relevancy of that question at this time. I don't see that it has any relation to the scope of the direct either.

MR. STITH: I think the witness will establish the fact that he was contacted. This will be, if I want to call him as my own witness, this will have a bearing on my examination at that time when I will not be limited by what was given on the direct.

MR. SCHWARZWALD: If the employer is now

making this witness his own that ought to be clear on the record. I repeat my objection as to that procedure. I didn't think we were at that point.

MR. STITH: No, we are not at this point. In order to expedite things if he wishes to let it stand on his last objection to your ruling I will proceed on this other set of questions.

328 HEARING OFFICER: All right.

By Mr. Stith:

Q. Now, Mr. Taggart, you say you did not contact, who did you contact at The Henry Furnace plant to ascertain information about rates of pay? A. Mike Klimko.

Q. Mike Klimko. Did you talk to any one else there? A. I don't believe that I did.

Q. And you said you talked with some people at the Luxaire plant about rates of pay? A. Yes.

Q. What time, what date was this? A. That is pretty hard for me to give you an exact date. I don't know.

Q. Who were the people you talked to at Elyria? A. Well, several fellows — Harold Smith for one.

Q. Harold Smith for one. Were there any others? A. Yes. Martin Ebble.

Q. Martin Ebble. A. Probably several others.

Q. Several others. But you don't know their names? A. Oh, yes, I know their names.

MR. SCHWARZWALD: For clarification, are we talking about rates now?

329 MR. STITH: We are talking about questions that he submitted to employees at the Luxaire, Incorporated in Elyria.

MR. SCHWARZWALD: Any question —

MR. STITH: Concerning rates. I thought that was my original question.

MR. SCHWARZWALD: That is what I wanted to make clear. Thank you.

THE WITNESS: I think there was several fellows there when I questioned about the rates. This is when I was told, "Incentive rates are \$1.52-1/2 for semi-skilled — for non-skilled and \$1.57-1/2 for semi-skilled."

By Mr. Stith:

Q. Were you given to understand that was all the incentive rates there were at the Elyria plant?

A. Yes.

Q. Did you make any further investigation —

A. I was told, "Everybody else would be hourly rated."

Q. Did you make any further investigation to ascertain whether there were any other rates? A. I don't know what other way I could ascertain any other rates except from the people that I had contact with.

Q. Directing your attention for the moment to Company Exhibit 4, on page 20, would you look at that please? A. Yes.

Q. Were you aware for example that there are Truckers and Welders at the Elyria plant who are on incentive?
330

MR. SCHWARZWALD: I didn't get that question. May it be repeated please?

By Mr. Stith:

Q. Were you aware that there were truckers and Welders at the Elyria plant on incentive?

A. Welders?

Q. Truckers and Welders?

MR. SCHWARZWALD: I am sorry. What time is being referred to?

MR. STITH: Prior to his writing the letter.

THE WITNESS: Well, I was aware that you had these classifications, yes. I wouldn't be sure which was incentive and which wasn't.

By Mr. Stith:

Q. But you have testified that the connotation of your words base rates and standards related to incentive operations and not non-incentive, is that correct? A. Yes.

Q. And you say that they are higher, did you know that the incentive rates for Truckers and Welders are higher in Elyria than at Medina at the time you wrote this letter? A. No, I did not know that.

Q. You did not know that? A. No.

331 Q. Did you make any effort to check these things? A. As I said before I used the information that I could gather from the people who I had contact with.

Q. And this was Mr. Smith and Mr. Ebbel and several others? A. Several others.

Q. Were you given any official copies of rates or production standards that were in use at the Elyria plant? A. Nobody seemed to have anything like that.

Q. Did you have any personal knowledge about these rates from any other source? A. No. Just what the men told me.

Q. Now, turning to The Henry Furnace in Medina, did you have any personal knowledge concerning those rates either on incentive or non-incentive? A. Only what I am told by Mike Klimko.

Q. Did you check with anybody else at The Henry Furnace Company? A. No.

Q. So it is your testimony then that this letter to which the company has objected was written by you in longhand at a time when you did not check the source of your information to any greater degree than you have testified, is that right? A. I had no

other way to check.

Q. Would you consider this a responsible statement on the part of the Union on the basis of that investigation? A. Yes.

MR. SCHWARZWALD: Objection.

HEARING OFFICER: The witness has already answered.

MR. STITH: I want that answer stricken based upon your ruling — oh, wait a minute. No, no, I got confused.

HEARING OFFICER: I might point out to the witness, and this applies to all witnesses, when there is an objection by either counsel the witness should refrain from answering until I make a ruling on the objection.

By Mr. Stith:

Q. Mr. Taggart, from your long years of experience in this work, have you not found it true that the terms used by companies in describing their various pay systems may vary? A. I am not sure I —

Q. From plant to plant? A. I am not sure that I understand what you mean by that.

Q. Well, I will put it more simply. You say that you service a number of plants — A. I have, yes.

Q. — isn't it true that companies, the terms that they use in describing their pay systems may differ? A. I suppose it is possible.

Q. Isn't it true also then that you were assuming that the rates that you were referring to in your letter were base rates applicable to incentive only?

333 A. I was referring to the incentive rates, yes.

Q. And yet you admit that you didn't know that there were at least two incentive classifications that were higher? A. I had no way of knowing. The rates that I was given was two rates for incentive work. \$1.52-1/2 and 1.57-1/2, that these applied to

all incentive workers.

Q. So then your information was not complete, is this correct? A. It was all I had.

Q. You have testified that you did not receive a copy of the Company Handbook until June 14th, is that right? A. That is right.

Q. So you couldn't possibly have known what terms were used, could you, at the Elyria plant in describing the pay structure? A. All I knew is what the men referred to.

Q. Your answer is not responsive.

MR. SCHWARZWALD: Objection. It certainly is.

By Mr. Stith:

Q. You couldn't have known then what the terms Luxaire used in describing its pay structure if you did not have a copy of this booklet?

MR. SCHWARZWALD: Objection. He answered the question. It was in a perfect responsive manner.

334 HEARING OFFICER: I will overrule the objection and permit the witness to answer the question. If he has an explanation he may also give his explanation.

THE WITNESS: Will you read back my answer?

(The Reporter did as directed.)

THE WITNESS: This is correct. The men referred to them as incentive jobs and hourly jobs. This is all that I could go by, nothing else to go by.

* * * * *

335 By Mr. Stith:

Q. Returning for the moment to this question of shift premium, Mr. Taggart. There has been testimony here of course about shift premium and shift differential and shift bonus, is it your understanding that those terms are generally synonymous? A. I

am not sure that I understand what you mean.

Q. Well, you stated on direct testimony that you did not know that the shift premium was added to the base rate for the Elyria Luxaire plant, is that correct? A. All I knew is that the base rates were \$1.52-1/2 and \$1.57-1/2. That is all I knew.

Q. So you didn't know — A. I knew there was a shift differential but what it was I didn't know.

Q. But you didn't know how it was applied?
A. No, I didn't know how it was applied.

Q. Is that correct? A. Yes.

336 Q. Now, according to your understanding of this case and generally, what would be the result of a shift premium being added to a base rate before computation of incentive and after computation of incentive? Do you understand that?

MR. SCHWARZWALD: Objection. I'm not sure that I understand the question.

HEARING OFFICER: Do you understand the question, Mr. Taggart?

THE WITNESS: I think I do.

HEARING OFFICER: Objection overruled. Answer it.

THE WITNESS: Either way it would be added on to the base rate.

By Mr. Stith:

Q. Would the earnings be higher in the case —
A. Well —

Q. — where the premium was added before computation of incentive. A. Yes. It would result in a higher earning I suppose but they are both add-ons.

Q. Now, both an add-on as the name applies is something added on, right? A. Right.

Q. Now, if it is not included in the incentive computation, would this result in a lower earnings on

on that same base rate?

MR. SCHWARZWALD: Objection. I really don't understand that.

337 HEARING OFFICER: I'm just a little hazy on that myself, Mr. Stith. Would you ask it again please.

MR. STITH: All right.

By Mr. Stith:

Q. If an add-on is merely added to a base rate after the computation of incentive earnings you would have an arithmetical result of the number of hours times the add-on, is that right, if the shift premium for example were \$.05 per hour and the man worked eight hours, what would his add-on be for the day?
A. \$.40.

Q. \$.40. And that would have nothing to do with the incentive as an add-on, correct? A. In that instance, no.

Q. Now, take the same illustration and add the \$.05 to the base rate and then compute the incentive on top of that, you would have a higher earnings result, correct? A. Probably. If the man made out.

MR. STITH: Now, Mr. Hearing Officer, I would like to call Mr. Taggart as my witness and examine him further concerning his relationship to this case.

MR. SCHWARZWALD: I will reenter my objection and make it more strenuously if that is possible. It is highly irregular. This means that the resting of the party is meaningless.

338 HEARING OFFICER: Overruled.

WILLIAM TAGGART

Became the EMPLOYER'S WITNESS.

DIRECT EXAMINATION

By Mr. Stith:

Q. Mr. Taggart, were you contacted by any

member of the Board following the election? A. No. Not until sometime after the election, the objections were filed.

Do you know the man's name from the Board?
A. I believe it was Levine, I believe.

Q. Did you give Mr. Levine an affidavit? A. I did.

Q. I hand you what is marked affidavit at the top and call your attention to the signature at the end, is this the affidavit that you gave Mr. Levine?

MR. SCHWARZWALD: Objection.

HEARING OFFICER: What is your objection, Mr. Schwarzwald?

MR. SCHWARZWALD: I still don't see any materiality or relevancy to this affidavit.

MR. STITH: I am going to develop that.

MR. SCHWARZWALD: There has to be a foundation laid before it is introduced. This is his witness.

339 MR. STITH: Yes. He is on direct.

MR. SCHWARZWALD: If he wants to ask him something let him ask him something.

HEARING OFFICER: I will sustain the objection. If you have any questions that you want to ask the witness of his own recollection —

MR. STITH: All right.

By Mr. Stith:

Q. Do you recall what you said in that affidavit with respect to the date on which the letter was sent to the employees?

MR. SCHWARZWALD: Objection.

HEARING OFFICER: Mr. Stith, this is your witness. That question was leading. You can ask the witness about the letter if you want to without reference to his statement.

By Mr. Stith:

Q. Did you say anything in your affidavit about the letter?

MR. SCHWARZWALD: Objection.

HEARING OFFICER: Sustained.

By Mr. Stith:

Q. You already testified that this went out to a number of employees for whom you had correct addresses? A. Yes.

340 Q. Is that right? A. Yes.

Q. Isn't it true that you stated in this affidavit that the letter was sent out on June the 2nd?

MR. SCHWARZWALD: Objection.

HEARING OFFICER: Again, Mr. Stith, this is your witness on direct examination.

MR. STITH: I am not confined. I could either use direct or indirect.

HEARING OFFICER: Under Rule 43(b).

MR. STITH: Yes.

By Mr. Stith:

Q. Company Exhibit 2 has been introduced and is part of this record, Mr. Taggart, when did you send that letter to the employees?

MR. SCHWARZWALD: May I enter an objection here to point out what is happening and what is being developed is a result of the company being able to reopen its case.

HEARING OFFICER: Off the record.

(Discussion was had off the record.)

HEARING OFFICER: On the record.

Mr. Taggart, directing your attention to Company Exhibit 2, is it your signature that appears at the end thereof, is that correct?

THE WITNESS: That is right.

341 HEARING OFFICER: And you testified that you mailed it to the employees of Olsen Manufacturing Company in Elyria?

THE WITNESS: Just to the ones that I had addresses for, names and addresses.

HEARING OFFICER: And how many employees were involved?

MR. SCHWARZWALD: Objection. The same objection, Mr. Hearing Officer. Again the company's case has been shored up and built a little too late.

HEARING OFFICER: Overruled.

THE WITNESS: May I answer?

HEARING OFFICER: Yes.

THE WITNESS: To my best guess I believe I mentioned in my statement to the Board about 180. It might be a few either way but it was pretty close to about that.

HEARING OFFICER: You also testified that was in answer to the company's letter of May the 13th 1965?

THE WITNESS: Yes.

HEARING OFFICER: Do you know when this letter was mailed?

MR. SCHWARZWALD: I take it that I have a standing objection?

HEARING OFFICER: Yes. When was it mailed?

THE WITNESS: June the 2nd.

HEARING OFFICER: June the 2nd. Any questions or objections?

342 MR. STITH: No.

MR. SCHWARZWALD: If the record does not show my objection to that question and answer and a motion to strike I will do so.

HEARING OFFICER: You have a standing exception, Mr. Schwarzwald.

MR. SCHWARZWALD: All right.

HEARING OFFICER: Any further questions?

MR. STITH: No further questions.

WILLIAM TAGGART

resumed as the PETITIONER'S WITNESS.

REDIRECT EXAMINATION

By Mr. Schwarzwald:

Q. Mr. Taggart, you testified that with regard to The Henry Furnace you checked only with Mike Klimko, will you tell us why please? A. Well, Mike I have known for a long time. He has been President of that Local Union for — I don't know — ten or twelve years I suppose. I felt that he would be the guy that I could talk to and get the answers.

MR. SCHWARZWALD: I am now going to ask the witness some questions that I think would be appropriate for cross-examination part of my examination so that the record may be clear.

343

WILLIAM TAGGART

resumed as the EMPLOYER'S WITNESS.

CROSS-EXAMINATION

By Mr. Schwarzwald:

Q. Mr. Taggart, what time on June the 2nd was Company Exhibit 2 mailed? A. Well, I didn't mail it. Normally it would be mailed right at the end of the office day when the girl leaves the office. When she leaves the office she takes all our mail and mails it, probably about 4:30 in the afternoon.

MR. SCHWARZWALD: No further questions.

HEARING OFFICER: Mr. Stith?

MR. STITH: No further questions.

HEARING OFFICER: Mr. Taggart —

MR. STITH: May we have —

HEARING OFFICER: — you testified that as to Company Exhibit 3 and Company Exhibit 4 that the first time you saw those was on June the 14th, is that correct?

THE WITNESS: That is right.

* * * * *

344

MICHAEL S. KLIMKO

* * * * *

345

DIRECT EXAMINATION

By Mr. Schwarzwald:

Q. Mr. Klimko, where are you employed?

A. The Henry Furnace Company, Medina, Ohio.

Q. Do you hold any position with the union at that company? A. Yes. I'm the President of the Local Union.

Q. What Local is that? A. 2195, United Steelworkers of America.

Q. The membership of that Local consists of only the employees of The Henry Furnace? A. Yes.

Q. How long, how many years have you been President? A. I have been Chairman for the past thirteen years.

Q. I'm sorry, but did you say Chairman?
A. Yes.

Q. Is that the top position in the Local Union?
A. Currently. The Chairman and the President are combined. It is the same person.

Q. The two offices that you hold — there are two offices but you hold them both? A. Yes. They are combined into one.

Q. Now, how many years has this combination been in existence? A. Approximately eight years.

346 Q. And you have held both offices for those eight years? A. Yes.

Q. If I understand you five years prior to that you were Chairman? A. Chairman of the Grievance Committee.

Q. When you say Chairman you mean Chairman of the Grievance Committee? A. Grievance Committee, Negotiating Committee.

Q. That is one combined Committee or two Committees? A. One combined.

Q. Now, Mr. Klimko, did you take any part in the organizing activities of The C. A. Olsen, Luxaire, Inc.? A. Yes, I did.

Q. Would you briefly sketch the part you played for us? A. I was requested by the International to assist in organizing or help organize. I attended meetings with the Committees and also meetings with the general membership. That was about the extent of my participation.

Q. This is prior to the election? A. Yes.

Q. In connection with any of this activity, did you address meetings of the employees? A. Yes, I did.

Q. At how many of those meetings did you discuss rates as to the two plants, the Medina plant, The Henry Furnace and the Elyria plant, The C. A. Olsen? A. Yes, I did.

347 Q. Could you tell us when and what you said? A. I believe it was the general membership meeting near the end of April, I believe it was a Thursday. I had an opportunity to talk to quite a few of the employees at the Luxaire, Incorporated plant. In discussing with them their base rates I had learned that in all of the areas that were discussed with me and the job classifications that were discussed with me the base rates in Medina were higher than they were at Luxaire, Incorporated.

HEARING OFFICER: That was April of '65?

THE WITNESS: April 1965, yes.

By Mr. Schwarzwald:

Q. You said that was a Thursday, do you recall if it was the last Thursday of the month? A. I am sure it was. It was the last Thursday in April.

Q. If I told you that the calendar shows that is April 29, 1965, would that sound like the proper date? A. Yes, it does.

Q. How many people were at the meeting that you addressed? A. I would say approximately 60 or 65.

Q. Do you know if most of those people were employees of C. A. Olsen? A. I assumed that they all were.

348 Q. This meeting was called for the employees of C. A. Olsen? A. Yes, it was.

HEARING OFFICER: Where was the meeting held?

THE WITNESS: At the Y.M.C.A. Hall in Elyria.

By Mr. Schwarzwald:

Q. Could you tell us again what you said to them about rates? A. I don't remember the words exactly. We were discussing different classifications. In discussing these I did mention, "That those of you who I have spoken with I understand our base rates in Medina are higher than those here." By here I meant Luxaire plant.

Q. Then C. A. Olsen? A. At that time it was C. A. Olsen.

Q. Now, when you used the term base rates, that word, what did you mean? A. That is the incentive rate for pieceworkers.

Q. Showing you Company Exhibit 2, Appendix A of that Exhibit, which is contained on Pages 39 and

40, which of these rates were you referring to?

MR. STITH: One moment, Mr. Schwarzwald. The record ought to say 3 I believe.

MR. SCHWARZWALD: I am sorry. Did I say 2?

MR. STITH: Yes.

349 MR. SCHWARZWALD: Thank you.

By Mr. Schwarzwald:

Q. Company Exhibit 3 is correct. A. Page 40, Incentive Classifications.

Q. Those you — those are the rates you meant by base rates? A. Yes.

Q. Have you ever used the term base rates to refer to non-incentive employees? A. No, I don't believe so.

Q. What do you call the rates of pay for non-incentive employees? A. Hourly rated employees.

Q. And the rates you call what? A. Day workers, that is one of the terms that we refer to. They are hourly rated employees.

Q. Now, as President of the Local and as Chairman of the Wage and Grievance Committee you have access to the rates from which employees are paid at the Medina plant, the minutes as specified for an operation for incentive workers? A. Yes, I do.

Q. Showing you Company Exhibit 7, when this was first introduced at the last hearing, did you copy the numbers from this Exhibit? A. Yes, I did.

350 Q. Looking at the column marked Medina, did you try and find those numbers in the books to which you have access? A. Yes. The Steward in the Welding Department and I went through all of the wage records in that department. We could not find any such rates or anything to correspond with these. We checked with all of the welders to see if any of them had ever seen such rates. There is no one there that has ever seen them nor could they be found.

Q. You were here today and you heard Mr. Minnich and Mr. Navratil testify about what these numbers referred to? A. Yes.

Q. And it was the sort of things that they were testifying about, those were the figures that you checked, is that correct? A. We checked the figures on this Exhibit 7.

Q. What I am getting to is the area of records to which you have access in which you looked, is that the area in which they were speaking of? A. No. We didn't have the records that I understood them to be referring to this morning. The records we have are for the complete rate, final rate and so on.

Q. I see. But you did check the complete and final rates in the Welding Department? A. Yes. Every rate in there, yes.

Q. Now, the books to which you have access then contain only rates on which employees are
351 actually paid, is that correct? A. Yes, that is correct.

Q. And has that been the situation for the years that you have held office in the Local Union? A. Yes. Those were the rates available to the employees in the departments.

Q. You say available to the employees. That is all that is available to the employees, you, or any other representative of the Union, is that correct? A. It is available to all the employees in the department, yes, sir.

Q. No other records available to any of the other Union representatives, are any other records available to any other Union representatives? A. We have a right to check time study data whenever grievances occur.

Q. Is this data for the rate which is being grieved? A. Yes.

Q. And that rate would be a rate on which employees are actually paid, is that correct? A. That

is correct.

Q. Just so there is no question, that would not be the type of rate shown in Company Exhibit 7?

A. It would not. It would not be that.

352 Q. Now, you have indicated that you do have a right to grieve over rates and so on? A. Yes, we do.

Q. I mean at The Henry Furnace Company?

A. Yes, we do.

Q. And that is made clear by the provisions of Company Exhibit 3, the contract? A. Yes.

Q. Now, Mr. Klimko, in the years that you held the positions that you have described, do you know of any work or jobs that were sent from the Elyria plant to the Medina plant? A. Yes, I do.

Q. Would you name those that you recall for us?

A. Casings for the OW-73, 83, the welding on the SU-125 shell.

Q. Anything else? A. (No response.)

Q. Let's deal for a moment on those. You said the casing for the OW-73-83, is that what you said?

A. Yes.

Q. Explain for the record what that is?

A. Well, it is a large oil type furnace. It is I believe the largest furnace that we ever made. Side panels measure — gosh, I would say almost 4 or 5 feet square, I don't know the exact measurements.

353 Q. You mean 4 or 5 feet on each side, is that what you are saying? A. Yes. The length and the width are somewhere in that vicinity of 4 or 5 feet.

Q. Do you remember about when that work was brought to your plant, brought from the Elyria plant?

A. Yes. It was in July or August of 1964 or 1963. 1963.

Q. All right. And could you tell us what happened as a result of that work being brought to the plant?

A. The employees in the Casing Department grieved. The rate was inadequate and they also grieved

that these panels were too large for one man to handle. The settlement of the grievance, they asked for an adjustment in rate and also asked that two men be put on the job because they felt that one man might be injured trying to handle these large panels since they were very oily and very slippery.

Q. What happened when that grievance went through the grievance procedure? A. In the first step of the procedure the foreman said, "That he had nothing to do with the decision on this."

The second step they informed us, "They would check with Elyria to find out how they are doing it here."

We were informed, "That one man was making them in Elyria and one man would have to do it in Medina."

354 When we got into the fourth step of the grievance procedure the company — I believe this was a verbal agreement — agreed that the job would be sent back to Elyria and never run in Medina again. The job has never been run in Medina since.

HEARING OFFICER: Did you finish running that job?

THE WITNESS: By that time the job had been run through, yes.

HEARING OFFICER: By the time you completed the fourth step of the grievance procedure you had already completed the work on it?

THE WITNESS: Yes. That would have been about a month after the grievance had been filed.

By Mr. Schwarzwald:

Q. Had the company timed the job? A. Yes.

Q. Did they time it and give you a rate? A. Yes. There were rates on it.

Q. They told you that the job had been run in

Elyria? A. Yes. The job was brought from Elyria.

Q. Did they give you the Elyria rates on it?

A. That I don't — I don't believe so. They were studied in Medina by the Medina engineer.

Q. Then you mentioned the SU-125, welding of the shell, do you want to break that down for us?

355 A. I am wondering if I meant SU — SA or SU.

Q. Which do you think it was? A. (No response.)

Q. Can you remember? A. I believe it was an SU as I stated. It was an S series 125.

Q. Now, what is an SU-125? A. This was a job here that involved welding 5 tubes together. They had brought a jig — yes, it was an Elyria jig — which these parts were assembled in. This jig was one that was loaded from the back and the bottom rather than from the top as the jigs in Medina are. The welders grieved that the loading of this jig from the back and behind and bottom caused a hardship for them and extra fatigue and strain. They also grieved that the rate wasn't adequate. The grievance was carried on through the fourth step.

Q. What happened to that grievance? A. This again was a verbal agreement presented by the Union to the Company. The job would be returned to Elyria and would not be run in Medina again. To my knowledge, in fact I am positive, the job has never been run in Medina since.

Q. And in what state did that leave the grievance in? A. The grievance is being held in abeyance in the fourth step until such time as the job is returned to Medina. Then we will proceed with action from there.

356 Q. Now, is that also true about the grievance in the OW-73 and 83? A. Yes.

HEARING OFFICER: Mr. Klimko, just for clarification, would you describe a jig or tell us, is it some sort of a rack?

THE WITNESS: Well, it is sort of a rack, yes. The parts are fitted into this and they are clamped together. The jig is to hold these parts together while they weld them together. Say a clamping device.

By Mr. Schwarzwald:

Q. You heard Mr. Navratil's testimony?

A. Yes, I did.

Q. And he spoke about 14 per cent fatigue and personal time in the Welding Department, is that correct? A. Yes.

Q. Do you know how that 14 per cent figure came into being? A. It came into being after a particular grievance had been filed by the welders, some six or seven years ago approximately, in claiming their fatigue allowance was not sufficient at 12 per cent which was the allowance given to all the operations in the plant. Through the grievance procedure the company did raise fatigue to 14 per cent for the welding operations. To this date all of the welding operations are at 14 per cent.

357 Q. And the rest of the plant is at 12 per cent?

A. That is correct.

Q. Was Mr. Navratil a time study engineer in the plant at that time? A. Yes, he was.

Q. Was he the sole time study engineer?

A. That is pretty hard for me to answer. Right off-hand I couldn't say whether he was the sole time study engineer or not at that time.

Q. He is now, is that correct? A. Yes, he is.

Q. Was someone else there? A. They had another engineer at one time. It has been so long ago I don't remember the dates.

Q. Now, following the election, the election at C. A. Olsen, have you talked to Mr. Taggart? A. Yes, I did.

Q. Do you remember when that was, when that

conversation was? A. He first called me immediately after the election to let me know of the outcome.

Q. I am merely trying to get to the conversation that he testified about. Sometime in June? A. Yes. I would say it was around two weeks after the election, somewhere in that vicinity.

358 Q. What happened? A. Well, he came to my house and inquired again about the base rates at Medina. I again assured him, "That the rates in Medina were \$1.53 for B and \$1.58 for the A." I then proceeded to give him a copy of our contract and turned to the Appendix A and showed him the rates as I had indicated to be.

HEARING OFFICER: You are speaking of Machine Operator A and Machine Operator B?

THE WITNESS: Yes.

By Mr. Schwarzwald:

Q. Did you then give him a copy of the contract?
A. Yes, I did.

Q. He had previously asked you about the base rates at the Medina plant? A. Yes, he did.

Q. Do you remember about when that was?
A. I believe it was around the end of April. I had discussed those with him on several occasions.

Q. Generally what did you tell him on those occasions? A. Well, having attended several of the meetings with the membership or employees here at Luxaire, Incorporated, as I stated, I had an opportunity to talk with several of these people. In fact, quite a few. I informed him time and again, "That the people with whom I had a chance to talk to," I in-
359 formed him, "although these people were Machine Operators, Assemblers and Loaders, all of these people with whom I had talked to told me what their rates were. Our rates were higher in Medina than it was in the plant in Elyria."

Q. Machine Operators, Assemblers and Loaders are the significant part of the work force at Medina?

A. Yes. I would say it is the great majority.

Q. But the first time that you gave him a copy of this agreement was after the election, Company Exhibit 3? A. Yes. That was when he came down. As I said, about two weeks after the election. Something like that. I don't know the exact date.

Q. Showing you Petitioner's Exhibit 5, a photostat copy of a letter that has certain ink, black markings here on the photostat, do you know anything about the handwriting as opposed to the typing and signature? A. Those are markings that I made in checking over this letter.

Q. How did you get a copy of the letter which you were checking over? A. Mr. Taggart brought it to my house.

Q. And there is some underlining here also, irregular underlining as opposed to the regular type underlining, did you do that also? A. Those are my
360 underlinings, yes.

MR. SCHWARZWALD: No further questions.

CROSS-EXAMINATION

By Mr. Stith:

Q. Mike, you said that you were President of Local 1295? A. Yes, sir.

Q. Consequently you are very familiar with Company Exhibit 3 which is the booklet form copy of the collective bargaining agreement, is that right? A. Yes, I am. Although some don't believe I am.

Q. Well, that is not pertinent to the question. Isn't it true, Mike, that beginning on page 39 and continuing on page 40 we have a list of rates there for both non-incentive and incentive classifications?

MR. SCHWARZWALD: Could the witness be given the Exhibit? I will give him the official one here since it has been offered. I am not sure that he

knows all of the pages.

MR. STITH: I am sure he does.

By Mr. Stith:

Q. Page 39 and 40. A. Yes.

Q. Now, the headings on those sheets, under Appendix A say, Schedule of Classifications and Rates Non-Incentive Classifications and Incentive
361 Classifications, isn't that right? A. Correct.

Q. Now, when you had these conversations with Mr. Taggart prior to the election that you testified about, is it your statement that you only discussed incentive jobs? A. I did discuss non-incentive rates with Elyria employees.

Q. Did you give him any information that would enable him to make a comparison on non-incentive?
A. Yes, I did.

Q. Do you know what the comparison would be?
A. Yes, I did know.

Q. All right. Would you — what is that comparison, are the non-incentive rates higher in Elyria than at Medina? A. Comparison that I was talking about was a die setter's rate. I informed him our rate in Medina was approximately \$2.65 where his was \$3.00 something.

Q. You referred to a meeting which you addressed the employees, Mr. Klimko, and stated that there were about 60 to 65 people there, is that right?
A. Yes, sir.

Q. Did you have any idea about how many employees were involved in the petition in this case?
A. I —

MR. SCHWARZWALD: Object. I am sorry but I don't understand the question.

362 By Mr. Stith:

Q. The total number of employees involved in the petition? A. (No response.)

Q. Do you know how many were involved in that?

MR. SCHWARZWALD: It is a matter of Board record, isn't it?

MR. STITH: He can answer it if he can.

HEARING OFFICER: If you know how many.

THE WITNESS: I did hear the figure. It was 200 and something. I can't tell you exactly but I had a general idea.

By Mr. Stith:

Q. You had approximately 60 to 65 of these people at this meeting? A. Yes.

Q. And you did not discuss as you state any information pertaining to rates other than incentive base rates, is that right? A. That is correct. Only — base rates were the only thing that I discussed.

Q. Base rates in relation to what, incentive?
A. Incentive workers.

Q. Did you know whether there were any of the non-incentive workers in attendance at that meeting?
363 A. There probably were but none talked to me.

Q. Now, you have stated that you talked to quite a few employees of Luxaire concerning base rates, did you have in your files any information about base rates at Luxaire? A. No. Only what they told me.

Q. And you talked to only a few of those people, is this your testimony? A. I said quite a few.

Q. By that, how many would you mean? A. Well, there was several meetings. It is hard for me to pinpoint that because at each meeting there would be probably 25 or 30 that I would have an opportunity to talk with.

Q. Now, turning to your testimony with respect to Company Exhibit 7, are you familiar with that?
A. Yes.

Q. You said that you check on this information after the — A. I checked on the comparison of the welding rates which the company had given after we adjourned last Wednesday I believe it was.

Q. Have you any idea how many production standards there are at your own plant, at the Henry Furnace? A. Over-all or any particular department?

Q. Well, as a total, have you any idea of the number? A. I would say around 1000.

364 Q. And you had testified that you have access to that in terms of checking upon the adequacy of the rates through the grievance procedure? A. I don't understand your question of checking on the adequacy.

Q. Adequacy of the production standards at Henry Furnace as a Union Representative? A. Adequacy in my opinion is a judgment.

Q. Well, you stated that you do have a right to check them, is that correct? A. If there is a grievance we have a right to check the time study sheets, yes.

Q. Do you have any similar information as it relates to Luxaire? A. Absolutely not.

Q. You have any way of determining whether, what the production standards were at Luxaire? A. Production standards related to this Exhibit 7 you are referring to?

Q. Generally? A. Generally?

MR. SCHWARZWALD: Objection. It is well beyond the scope of the direct. It is a broad question.

By Mr. Stith:

365 Q. Well, did you have any means of checking other than talking with these people concerning the production standards that relate to Company Exhibit 7? A. No, I didn't. Only the information from the employees.

Q. You have never received any official information concerning that? A. No. I am sure that the company wouldn't give me that.

Q. You said that you weren't sure in your mind whether this job was SU-125 that was transferred down or SA-125, would it be more correct to say that it was SA rather than SU? A. No, it would not.

Q. But do you know which one it was for sure? A. It was not the SA.

Q. It was not the SA. You say that there are at least over 1000 production standards at your plant, The Henry Furnace, have you any estimate of your own as to how many there would be at the Elyria plant?

MR. SCHWARZWALD: Objection.

MR. STITH: He has testified about two jobs that were brought down there. I have a right to ask him what knowledge he has about that in relation to the total.

MR. SCHWARZWALD: If that is where the question is going I don't think it is getting there very fast.

MR. STITH: That is where it is getting at.

366 MR. SCHWARZWALD: I don't think it is related to the statement.

HEARING OFFICER: Would you read back that question please, Mr. Reporter?

(The Reporter did as directed.)

HEARING OFFICER: If you can answer it.

THE WITNESS: Having heard the testimony of the time study engineer from the plant here, Elyria plant, I assume that he is probably accurate. I would have to assume — on my own there is no way that I could tell how many rate standards there would be.

HEARING OFFICER: Off the record.

(Discussion was had off the record.)

HEARING OFFICER: On the record.

By Mr. Stith:

Q. You testified that there were two jobs, Mr. Klimko, OW-73-83 and SU-125 that had been transferred from Elyria to Medina, is that correct?

A. There were two that I named. There have been many more.

Q. Do you know of any others? A. Right off-hand I can't name them for you. But there have been jobs brought to Medina and sent back to Elyria before. These are two that I could think of right off-hand.

Q. Well, in view of Mr. Minnich's testimony about the numbers of jobs, isn't it true that two would be a very small percentage of your total
367 amount of work performed?

MR. SCHWARZWALD: Well, the record speaks for itself on that point. I don't think this witness has to do any mathematics. I don't think that ought to be answered. I object. It is argumentative.

HEARING OFFICER: Sustained.

MR. STITH: No further questions.

HEARING OFFICER: Mr. Klimko, you mentioned this SU-125 job, do you recall when this particular job was sent to Medina from Elyria and when it was returned to Elyria?

THE WITNESS: I believe the grievance was filed in August of 1964, about a year ago.

HEARING OFFICER: With respect to Company Exhibit 7, first of all, you do have the 3, 4, 5, 6-tube welding operation there, do you not?

THE WITNESS: Yes, sir.

HEARING OFFICER: Do you have any times which are comparable to those set forth in the Exhibit in any of the records that would show?

THE WITNESS: No, sir. We checked every single rate in our operation, that is, in the Welding Department. There is nothing that compares with either one of these two lists shown on Exhibit 7.

HEARING OFFICER: Do you of your own knowledge know what the time standards are for this particular operation in the Welding Department?

368 THE WITNESS: No, sir, I do not.

HEARING OFFICER: I have no further questions. Anyone else have any further questions?

MR. STITH: No questions.

MR. SCHWARZWALD: I do, Mr. Hearing Officer.

REDIRECT EXAMINATION

By Mr. Schwarzwald:

* * * * *

369 Q. Now, you mentioned this die setter? A. Yes.

Q. Is he a non-incentive worker? A. That is correct.

Q. Did you talk to such a worker? A. Yes, I did.

Q. What was that conversation and when? A. It was sometime in April. I couldn't pin the exact date down. But it was in the presence of 9 or 10 people. We were discussing base rates of the assembly crew. This individual stated, "He was a die setter. He wondered how his rate compared with Medina's?" Although I realized that his rate was some \$.40 higher than ours I did inform him, "That our rate was approximately \$2.65."

370

Q. Did he tell you what his rate was? A. Yes.

Q. What did he say? A. I believe he said, "\$3.09."

Q. All right.

MR. SCHWARZWALD: No further questions.

MR. STITH: No questions.

HEARING OFFICER: Mr. Klimko, you mentioned that you talked to employees of the Elyria plant at several different meetings and you would talk to maybe 25 or 30 at a time —

THE WITNESS: Yes.

HEARING OFFICER: — do you recall when it was that you talked to them?

THE WITNESS: Well, from April down through May. Again I don't know the exact dates of these meetings. If I had the exact dates I could tell you the exact times.

HEARING OFFICER: Were these meetings that were held at the Y.M.C.A. Hall in Elyria?

THE WITNESS: Yes.

HEARING OFFICER: During the month of April and May 1965?

THE WITNESS: That is correct.

371 HEARING OFFICER: When you had this conversation with the die setter that was in April of 1965?

THE WITNESS: Yes. I would say in the middle of April.

HEARING OFFICER: Was that at one of these meetings that you talked with the other people?

THE WITNESS: That was at a Committee meeting where there were 8 or 9 committeemen present along with the staff representative and myself.

* * * * *

PETITIONER'S EXHIBIT NO. 1

THE C. A. OLSEN MANUFACTURING COMPANY
ELYRIA, OHIO 44035

* * *

LUXAIRE

May 28, 1965

All Hourly Payroll Employees
(And for the information of all other Elyria Plant employees)

Today you received your copy of the Olsen Handbook for hourly employees, listing the policies and procedures that are, in effect, your present conditions of employment. This Handbook is your Company's written statement of policies and procedures designed to make Olsen jobs good jobs, to make your working hours mutually beneficial. The provisions, in writing, in this Handbook represent established policies and procedures and are just as binding on the Company as any union contract.

I hope you will agree you have just as much -- if not more -- protection in the constructive things that really count as you'll find in any union contract. You didn't have to pay union dues and leave yourself open to strikes, illegal picket duty and violence to get these constructive benefits and safeguards.

Union organizers say a union contract is your only means of job security. Since our job security comes only from customers' orders, I know you understand there is no assurance a union contract can give you one bit more security on your job than you have right now. You may also be told there are things in a union contract that aren't covered in your Handbook. There are indeed, but they include things I'm sure you'll be happy to be without. In the Handbook, for example:

- * There is no provision for taking money out of your pay each month for union dues -- no "check-off" provision, as it is called.
- * There is no provision requiring membership in a union as a condition of employment.

- * There is no provision that says union stewards and officers stay on the job while longer-service employees are laid off.
- * And, perhaps most important, there is no provision covering strike situations, work stoppages, or lockouts.

You will find all of these things in USW contracts and if the union wins, these will probably be the very first things they'll ask for. I'm sure these are conditions of employment you don't want.

On the other hand, the policies spelled out in your Handbook are tangible evidence of your Company's determination to continue the progress of the past . . . to keep Olsen jobs among the best, with good wages, valuable benefits and good working conditions making our association mutually rewarding in all respects.

Sincerely,

/s/ R. W. Lindsay
President

PETITIONER'S EXHIBIT NO. 2

THE C. A. OLSEN MANUFACTURING COMPANY
ELYRIA, OHIO 44035

* * *

LUXAIRE

March 8, 1965

All Hourly Payroll Employees
(And for the information of all other Elyria plant employees)

We understand the Steel Workers' Union again has mailed organizing cards to certain employee's homes. This will be the fifth time one union or another has sought to draw our employees into their organization. By now you probably can recite what comes next in an organizing campaign. The union again will try to get you stirred up with fears that the Company won't continue to pay good wages and provide good benefits . . . or that something may happen to your seniority . . . or that you won't get a fair hearing on problems, if you have any.

You have been through all this in the past, and I believe you will agree with me that events have proved you don't need a union here. Also, I am sure you are well aware that it isn't union contracts but customer contracts that provide our jobs and steady pay. And customer contracts come only because you and your fellow employees are doing good work.

One new element has been added this year to the union picture, the evidence of problems within the union's own house. Messrs. Abel and McDonald, candidates for the highest office in the union which would like to represent you and get your dues, have each gone to great lengths publicly to criticize the other. The results of the election are still in doubt, apparently because one group just doesn't trust the other. Is this the kind of organization you want to pay good money to be mixed up with?

Further, the McDonald camp has indicated there will be more strikes if the Abel forces eventually win. The Abel camp claims local unions won't have much of a say any more if McDonald wins. To me, this adds up to the fact that no matter who wins the election, the members seem bound to lose something. I wouldn't be surprised if a lot of members of the Steel Workers' would be glad right now to be out of such a situation. It seems to me a person would think a long time before voluntarily getting into it.

In view of all this, we believe most employees would prefer that another contest never gets off the ground. Some employees have received cards, and we suggest they not sign them. Or, if the cards are signed, don't send them in. We expect the union will be getting cards to all employees during the next few months. The way to avoid another campaign is not let it get started. If 30% of the employees sign cards, the Labor Board will usually conduct an election if the union asks for one. On the other hand many unions, to avoid the embarrassment of defeat, don't ask the Labor Board to conduct an election unless they get a majority of the cards signed. You can see the chances are excellent for avoiding another campaign if you don't sign the card.

It is a fact that the number of people in the U. S. represented by unions is no greater today than it was 15 years ago, in the face of an increase in our total labor force from 60,000,000 in 1950 to 77,000,000 now. More and more employees, like you, have found the strikes, the dues, the union "politics" not to their liking.

We are determined to keep C. A. Olsen a good place to work and to do all we can to provide steady employment which I know you and your family appreciate. If you have any questions about our policies, or about the business, please do not hesitate to ask. If your foreman doesn't have the answer, he will get it for you. Or, if for some reason you would prefer to discuss a matter with someone else in management, please feel free to do so.

Sincerely,

/s/ R. W. Lindsay
President

RWL/je

PETITIONER'S EXHIBIT NO. 3

THE C. A. OLSEN MANUFACTURING COMPANY
ELYRIA, OHIO 44035

* * *

LUXAIRE

April 29, 1965

All Hourly Payroll Employees
(And for the information of all other Elyria plant employees)

By now you probably have seen the notice on the bulletin boards stating that the USW has filed a petition asking the National Labor Relations Board to hold an election among production and maintenance employees here.

You'll remember this is the fifth attempt by a union to gain a foothold in our plant. Four times in the past you and your fellow employees have defeated such attempts. By your votes in those elections you have demonstrated your awareness that you do not need a union to enjoy good working conditions and to receive pay that ranks with the best in this area.

I sincerely hope you will vote the same way again and defeat this new attempt by the union to get into our plant.

Up to this time the NLRB has not set a date for the election. If past practice is followed, the election will probably be held within three or four weeks, and balloting will be in the plant. To keep you as fully informed as possible, I will advise you of the date as soon as it is set.

Previously, I told you I could see no need for a union at Olsen. I want to give you some of the reasons why I feel that way.

When a union comes into a plant -- any union at all -- it immediately drives a wedge between you and your management and divides us into two opposing camps. It becomes a matter of the union constantly fighting something they call the "Company". Under these conditions it is extremely difficult to maintain our friendly atmosphere and to make sure that everyone is treated with the dignity and respect he deserves

as an individual. When you think about it for a minute, you'll realize that you are the Company just as much as I am or any other member of management.

A union is a third party. It has no real stake in our success as individuals and as a company, other than the dues money it would get if it wins this election. For us -- for you and for me -- the success of Olsen determines our individual success.

We will continue to work here, regardless of the outcome of the election. This is not true of the union organizer. He'll be gone after the election.

Experience at a number of plants where there are unions has demonstrated conclusively that a union is generally more interested in strengthening its own position than it is in the real welfare of the Company or in the welfare of the employees it represents.

A union can very well be a disruptive influence that does not in any way contribute to getting our products on the market and satisfying customers. A union raises the possibility of strikes and work interruptions -- and I'm sure you realize that no one ever wins a strike. Strikes inevitably result in lost pay for you and lost orders for the Company. Job security suffers.

The introduction of a union often results in inefficient operation, and it's obvious none of us can gain from inefficiency.

The union organizer has said that a union would mean greater job security for you. That, of course, is a statement he cannot back up. No union -- and no company either -- can guarantee your job security. That comes from only one place -- our customers. The better products we make at the right price, and the more orders we receive, the greater our job security. It's as simple as that, and I'm sure you are well aware of this fact.

Between now and the election, you may find the union organizer making a number of promises. I hope you'll keep in mind the fact that it's easy for him to do that -- but it's something else to deliver the goods.

The thing to remember is that a union can get for you only what the Company, under the circumstances, is willing and able to give -- and you know our long-standing policy is to treat everyone the same, whether they are represented by a union or not.

Of course, that won't stop a union from promising the things the organizer believes will attract the most votes. After all, his primary aim is to win the election. He doesn't have to work here and live day after day with whatever comes out of contract negotiations.

I'm sure you'll want all the facts while you are making up your mind how to cast your ballot. If you have any questions, be sure to ask your supervisor. If he doesn't have an immediate answer, he'll be glad to get one for you.

Sincerely,

/s/ R. W. Lindsay
President

RWL/je

PETITIONER'S EXHIBIT NO. 4

THE C. A. OLSEN MANUFACTURING COMPANY
ELYRIA, OHIO 44035

* * *

LUXAIRE

May 6, 1965

All Hourly Payroll Employees
(And for the information of all other Elyria Plant employees)

You may know that the National Labor Relations Board has called a hearing for May 11 on the election petition filed by the USW.

The purpose of this hearing is to determine which employees should be eligible to vote, so that everyone who would be directly affected will have an opportunity to cast his ballot. A date for the election will probably be announced a week or so after the hearing.

Since this matter of an election came up, you have received a number of communications from the union organizer. I would like to comment briefly on some statements that have been made to you. Although I have no intention of engaging in a running debate with the union representative on such matters, I do feel a responsibility to set the record straight in the case of flagrant misrepresentations. I'm sure you would want me to do that.

One of the communications you may have received was a leaflet attempting to show how little time was lost because of strikes. I don't think I have to say very much about that because the newspapers have been full of steel strike talk for quite a while. You may have read stories about companies piling up stocks of steel in anticipation of a strike when the contract extension expires next September.

Regardless of anything the union organizer may say, any time there is a union -- any union -- there is a prospect of strikes, with lost pay for you and lost orders for the Company. That hurts everyone.

The other communication I want to mention is a letter signed "A friend and fellow employee." From the content of this letter, I must regretfully conclude that the writer -- if he really is a friend and fellow employee -- is pretty thoroughly mixed up on his facts.

If, on the other hand, the letter was written by the union organizer, then it's more understandable. Obviously he would not be familiar with conditions here and could be expected to make irresponsible statements for which he hoped not to be held accountable.

His comments on pay are a good example. As you know, the day rate for incentive employees was increased (from 50 cents over incentive to 50 per cent over incentive) on January 18. This increase averaged more than 25 cents an hour and was granted long before there was any talk of a union.

The general increase was effective April 1, the same date on which general increases have gone into effect for many years. Furthermore, the raise was the same as that given at Henry Furnace in Medina. The fact that there is a union there made no difference in the date or the size of the increase.

The death-leave arrangement was announced February 5, also before there was any union talk.

You'll recall you received substantial pension improvements December 1, 1964. The writer of the letter ignored this, just as he ignored the fact that you didn't need a union to get these improvements, or to get your pay increase.

As I said, I don't intend to discuss all of the irresponsible statements that were made, because I believe you can recognize them for what they are. The technique of double-talk, of asking questions without providing any answers, is a pure and simple propaganda device. These deceptions are aimed entirely at getting you into a union and adding your dues dollars every month to the union coffers.

Incidentally, if the union wins the election, your dues would be deducted from your pay and sent to USW headquarters in Pittsburgh. The national union would take more than half of your money; less than half of it would be sent back to your local union.

Your union dues would probably be \$5 a month. That's the same as taking a pay cut of that amount. It's one of the things you should consider carefully when you're deciding how to vote in the election.

Sincerely,

/s/ R. W. Lindsay
President

RWL/je

PETITIONER'S EXHIBIT NO. 5

THE C. A. OLSEN MANUFACTURING COMPANY
ELYRIA, OHIO 44035

* * *

LUXAIRE

May 13, 1965

All Hourly Payroll Employees
(And for the information of all other Elyria Plant employees)

When the USW organizer asked you to sign union cards, he pointed out that the Company has been making progress since the last election was held in 1963.

I want to affirm that statement. The Company has indeed made progress in the way of adding new facilities to expand our product line and continue to keep Olsen competitive with other companies in our field. I think all of us can be proud of this progress, which is essential to maintaining job security for the greatest number of employees.

Then he asks: "How about you?"

That, of course, is something you can easily figure out for yourself. You know you received a general increase April 1 and that important improvements were made in your pension plan last December 1. These are facts which no amount of union propaganda can refute. You didn't need a union to get these improvements, and you won't need a union to keep them or to add to them as time goes on.

I don't know what the union may have told you it could get in the way of more money or more benefits. But I think you should know our policy here and understand that it is based on recognition of our responsibility to be fair to everyone at all times, whether or not there is a union. This is the way to make sure that C. A. Olsen is one of the best places to work in our industry.

On the matter of wages, our long-standing policy is to pay rates that are as high, or higher, than other companies in our area for the same kind of work. You'll be interested to know that our straight time average hourly earnings for April were 53.6 cents an hour higher than the USW-represented employees at Henry Furnace in Medina. That's the way the record stands. You don't need a union to get fair earnings.

At Olsen hourly-average earnings have gone up over 70 cents an hour in the last eight years. This is considerably above the average increase in this area and higher than the national average.

Incidentally, we have checked on the time values for the same work done in both Elyria and Medina and found that as much -- or more -- time is allowed to perform the work at Elyria as at Medina. You don't need a union to get fair time values.

You can see that these rates of pay and time values are determined on the same sound and accepted principles whether there is a union or not.

In this connection I've heard a statement that we might as well have a union here because we're owned by Westinghouse and Westinghouse has unions. I would like to make two points to clear up this misunderstanding:

1. It's true we are a subsidiary of Westinghouse, but I'm sure you understand that we operate independently of Westinghouse. We've run our own ship here in the past, and we'll continue to do the same thing in the future.
2. While there are unions in many Westinghouse plants, there are also a number of plants where there are no unions. I know that Westinghouse policy is also to treat everyone the same whether or not they are represented by unions. Just as

a matter of interest, there is an increasing percentage of employees in Westinghouse who are not represented by unions. This follows a national trend I mentioned to you in a previous letter. More and more employees are finding that the added costs of union membership, the added risks of losing pay in strikes, and the lessened personal freedom are not to their liking.

I would like to make just one more comment on pay. You may know that we are constantly reviewing rates to be certain they continue to rank with the best in our area. At this time average hourly pay at Olsen is 28 cents an hour higher than the average for Lorain County. Furthermore, according to the latest figures of the U. S. Bureau of Labor Statistics, our average is 15 cents an hour higher than the average for the Cleveland area.

I thought you would like to have these facts.

Sincerely,

/s/ R. W. Lindsay
President

RWL/je

PETITIONER'S EXHIBIT NO. 6

THE C. A. OLSEN MANUFACTURING COMPANY
ELYRIA, OHIO 44035

* * *

LUXAIRE

May 20, 1965

All Hourly Payroll Employees
(And for the information of all other Elyria Plant employees)

Many of you have voted in previous National Labor Relations Board elections or have defeated attempts of unions to force their way into our plant. No doubt you are familiar with the election procedures.

A number of employees, however, have not been involved in these elections, and may not be aware they are entitled to receive information from the Company at any time during the election.

With time growing short before the election, I want to be sure everyone understand that foremen and supervisors can answer any questions right up to the actual time of voting, so if you have any questions at all, please ask your foremen or the Personnel Manager.

For one thing I have heard that some people believe that they have to vote for the union because they had signed cards. This, of course, is just not so. If you signed an authorization card, you did nothing more than indicate interest. You did not bind yourself to vote one way or the other.

The election to be conducted by the NLRB will be by secret ballot, and you will be the only one who will ever know how you vote. On your ballot there will be two squares, one marked "Yes" and the other marked "No". I would like to urge you to mark an "X" in the "No" square. If you do that, you will be voting to maintain your present freedom as an independent individual employee.

The decision, of course, is yours to make. I hope you will make it with full knowledge of the curtailed freedoms that go along with union membership, and with a complete understanding of the benefits you have gained in recent years without intervention of a union and the danger of strikes.

Naturally, you have a right to vote for the union if that is what you want. At the same time I hope you understand that you just have the same right to vote against the union, regardless of whether or not you signed an authorization card.

In connection with the election I would like to emphasize one point. There is no advantage to you in not voting. After the election there will either be a union representing all production and maintenance employees, or there will be no union at all.

To get into our plant the union needs only one more than half of the votes cast. That means that if 200 employees vote, the union would win if it received 101 votes. If you do not want the union, the best way to keep it out is to vote "No" in the election.

If you fail to vote, you will be letting other people make the decision for you. This could very well be one of the most important decisions you will be asked to make in your working lifetime. I think every employee has too much at stake to let this happen.

Sincerely,

/s/ R. W. Lindsay
President

RWL/je

COMPANY'S EXHIBIT NO. 2

* * *

* * *

* * *

UNITED STEELWORKERS OF AMERICA
A.F.L.-C.I.O.
DISTRICT NO. 28
614 WESTGATE TOWERS
CLEVELAND, OHIO 44115

* * *

* * *

TO ALL HOURLY RATED EMPLOYEES OF C.A. OLSEN
CO.

Dear Sir and Brother:

Since the hour of the election is almost at hand I would like to take this last opportunity to point out a few things to you before you cast your ballot on Friday.

The past is gone and cannot be undone, we can only work for the present and plan for the future. Your opportunity to begin to progress starts with casting your ballot on Friday to gain certification from the National Labor Relations Board.

This job you must do yourself, however it is only the first step, much more will remain to be done. Electing officers and committeemen of your choice to serve you, getting a charter and supplies to establish your Local Union, selecting a negotiating committee, and the drafting of a contract proposal to start negotiations with the Company are all jobs that must be done promptly, and contrary to what your employer says, the organizer will be around to help you accomplish all these tasks.

Since the campaign has started your employer has worked very hard to persuade you not to organize. This certainly should make you wonder why. The answer is quite simple. He knows that getting organized is to your benefit, and that you will have a voice in matters that he has had the sole and final say in until now. He also knows that he will

have to bargain with you on wages, rates, hours, benefits, and all other things that come within the scope of a collective bargaining agreement. He just doesn't want to relinquish any of these rights to you even though under the law you can have them.

Is it any wonder that he has made some pretty rash statements in his letters to discourage you. Just so we set the record straight, the base rates of pay at the Medina plant are higher than the rates at Olsen, and the standards are generally better because you see, we have a voice in setting them.

In any event, it's time for a change at Olsen — a change for the better. Make the change come true the American Way, by casting your ballot on Friday.

Best wishes for your success!

Sincerely,

/s/ William Taggart
William Taggart, Rep.

FAMILY SECURITY

25 YEARS OF PROGRESS WITH AMERICAN UNIONISM

Tomorrow Can
Always Be Better
TODAY'S BENEFITS ARE
THE RESULTS OF YESTER-
DAY'S UNION.
TOMORROW'S GAINS DE-
PEND GREATLY ON WHAT
FOLKS DO TODAY!

TYPE OF FAMILY SECURITY PROGRAM	NUMBER OF AMERICANS COVERED IN -	
	1940	1962
GROUP INSURANCE	8,800,000	52,100,000
HOSPITAL-MEDICAL	9,800,000	110,000,000
PENSIONS	3,700,000	25,000,000

THE UNIONS LED THE WAY

IT IS A WELL-KNOWN FACT THAT THE COLLECTIVE BARGAINING EFFORTS OF AMERICAN UNIONS HAVE PUSHED INTO PROMINENCE SUCH THINGS AS COMPANY-PAID RETIRATS OF INSURANCE, HOSPITAL-MEDICAL PROTECTION, AND PENSION RETIREMENT PLANS.

GLANCE AT THE GOVERNMENT FIGURES IN THE ABOVE TABLE SHOWS THE GREAT PROGRESS WHICH HAS BEEN MADE FOR MANY, MANY FAMILIES BECAUSE THE GOVERNMENT OF UNIONISM WAS TRANSLATED INTO PROGRAMS OF PROGRESS FOR ALL AMERICANS. MANY OTHER THINGS LIKE PAID VACATIONS, PAID HOLIDAYS, ETC., COULD ALL BE LISTED.

THE FACT IS THAT THE AMERICAN FAMILY IS MORE SECURE TODAY BECAUSE OF THE PROGRAM OF AMERICAN UNIONISM. CONTINUED GROWTH OF UNIONISM MEANS CONTINUED "FAMILY PROGRESS."

THE UNITED STATES

BEST COPY AVAILABLE

from the original bound volume

COMPANY EXHIBIT NO. 3

EXCERPTS FROM
AGREEMENT

Between

The Henry Furnace Company

and

Local No. 2195

United Steelworkers of America (AFL-CIO)

APRIL 1, 1964

* * * * *

ARTICLE VII

Wages

SECTION 1. Newly hired employees shall be on probation for a period of forty-five (45) calendar days during which time their seniority shall remain suspended. After having satisfactorily served forty-five (45) calendar days from the original hiring date, employees assigned to day work, non-incentive classifications, shall receive a rate not less than the hourly rate specified for labor in Appendix A, and their seniority shall date back to their original hiring date.

SECTION 2. Effective April 1, 1964, rates of pay for classifications of work covered by this Agreement shall be determined and thereafter maintained in accordance with a Wage Schedule which shall hereafter be known and designated as "Appendix A" which is hereby incorporated and made a part of this Agreement. Individual employee earnings shall be computed on the basis of the hourly base rate of pay, including incentive when applicable, in accordance with the rate of pay established for the classification to which the employee is assigned; and such employee shall be expected and required to perform all of the functions and jobs included in the assigned classification of work, as designated by the Company.

As a result of negotiations, the wage schedule set forth in "Appendix A" shall be revised to reflect a general wage increase in accordance with the following schedule:

Effective Date	Incentive Classification	Non-Incentive Classification
April 1, 1964	2-1/2¢	5¢
April 1, 1965	3¢	6¢

SECTION 3. All employees shall be paid a five (5¢) cent night shift bonus in addition to their regular hourly rate for all work performed on the second shift, and a ten (10¢) cent bonus for all work performed on the third shift. A second shift designation shall be deemed to apply to all work performed on shifts which are regularly scheduled to start between the hours of 12:00 noon and 6:00 P.M. and a third shift designation shall apply to all work performed on a shift which is regularly scheduled to start between the hours of 6:00 P.M. and 12:00 Midnight.

SECTION 4. If inequalities in classification hourly wage rates are alleged to exist, and negotiation for adjustment is requested, such negotiations shall be started and conducted according to the Grievance Procedure of this Agreement.

SECTION 5. Except under circumstances beyond the Company's control, there shall be no more than one (1) week's pay held back for the purpose of computing earnings to be received for incentive or non-incentive workers.

* * * * *

APPENDIX A"

SCHEDULE OF CLASSIFICATIONS AND RATES
NON-INCENTIVE CLASSIFICATIONS

	<u>Effective April 1, 1964</u>			<u>Effective April 1, 1965</u>		
	<u>3 Mo.</u>	<u>6 Mo.</u>	<u>1 Yr.</u>	<u>3 Mo.</u>	<u>6 Mo.</u>	<u>1 Yr.</u>
Millwright A	\$2.44	\$2.49	\$2.59	\$2.50	\$2.55	\$2.65
Millwright B	2.34	2.39	2.49	2.40	2.45	2.55
Electrician A	2.44	2.49	2.59	2.50	2.55	2.65
Electrician B	2.34	2.39	2.49	2.40	2.45	2.55
Sweeper Operator	2.14	2.19	2.29	2.20	2.25	2.35
Machinist Layout	2.39	2.44	2.54	2.45	2.50	2.60
Machinist	2.34	2.39	2.49	2.40	2.45	2.55
Sheet Metal Layout	2.49	2.54	2.64	2.55	2.60	2.70
Die Setters	2.44	2.49	2.59	2.50	2.55	2.65
Spec. Fitting Maker	2.29	2.34	2.44	2.35	2.40	2.50
Townmotor Operators	2.09	2.14	2.24	2.15	2.20	2.30
Buffers	2.09	2.14	2.24	2.15	2.20	2.30
L.T.L. Packer	2.19	2.24	2.34	2.25	2.30	2.40
Truck Driver	2.29	2.34	2.44	2.35	2.40	2.50
Parcel Post Clerk	2.24	2.29	2.39	2.30	2.35	2.45
Semi-Skilled Labor	2.09	2.14	2.24	2.15	2.20	2.30
Custodian	1.94			2.00		
Watchmen	1.89			1.95		
Labor	1.89			1.95		

"APPENDIX A" (Continued)

INCENTIVE CLASSIFICATION

	Effective April 1, 1964			Effective April 1, 1965		
	3 Mo.	6 Mo.	1 Yr.	3 Mo.	6 Mo.	1 Yr.
Truckers	\$1.30	\$1.35	\$1.45	\$1.33	\$1.38	\$1.48
Machine Operator A	1.40	1.45	1.55	1.43	1.48	1.58
Machine Operator B	1.35	1.40	1.50	1.38	1.43	1.53
Packers A	1.40	1.45	1.55	1.43	1.48	1.58
Packers B	1.35	1.40	1.50	1.38	1.43	1.53
Checkers	1.40	1.45	1.55	1.43	1.48	1.58
Towmotor Drivers	1.35	1.40	1.50	1.38	1.43	1.53
Assemblers	1.35	1.40	1.50	1.38	1.43	1.53
Welders	1.35	1.40	1.50	1.38	1.43	1.53
Painters	1.40	1.45	1.55	1.43	1.48	1.58
Loaders	1.35	1.40	1.50	1.38	1.43	1.53
Labor Rate to be used on Numbers M-606, M-609, M-620 for incentive workers	1.89			1.95		
Special Job No. 99-1	2.09			2.15		
	*	*	*	*	*	*

Negotiations for the establishment of descriptions covering the duties to be performed by the classifications set forth in this Appendix shall be commenced by the parties after the date of this Agreement, and when mutually agreed upon by the Company and the Union, shall be incorporated and made a part of this Appendix.



You and Your Job at Olsen

Handbook for Hourly Employees



The C. A. Olsen Manufacturing Company

Elyria, Ohio

YOUR PAY AND PERFORMANCE

The policy at Olsen is to pay wages established after a thorough survey and review of those being paid by other industries in the area for comparable work. The policy of keeping our pay as good as, or better than, the average in our area for the same type of work is maintained by periodic checks of the area.

For all employees, a review of classification and rate of pay is held at least semi-annually to assure fair and equitable administration of wage policies.

HOURS OF WORK

The standard work week is 40 hours per week, five days a week from Monday through Friday, eight hours a day. The payroll week commences at midnight between Sunday and Monday and ends at 11:59 P.M. the following Sunday.

The first shift starts at 6:45 A.M. and ends at 3:15 P.M., with a lunch period of one-half hour from noon until 12:30 P.M.

The second shift starts at 3:15 P.M. and continues until 11:45 P.M. Lunch period for the second shift is from 8:30 P.M. to 9:00 P.M.

A minimum advance notice of two days is given when there is any change in hours of work, and these changes are posted when they affect the entire Plant or an entire Department.

YOUR TIME CARD

Your time card is the means by which the Company computes your earnings and it is important that your work be recorded correctly and legibly.

If there is any question about completed work, unusual conditions, or filling out your time card, please consult your foreman or supervisor.

No one is permitted to punch your time card for you. You must do that yourself — at the beginning of your shift and again at the end of your work day. Of course, any time you leave the plant, except in performance of assigned work, you must punch out when you go and in when you return.

PAY DAY

Friday of each week is pay day. The pay check you receive under normal circumstances is not your earnings for the week you receive the check, but is for the previous week. It requires approximately five days to compute your weekly earnings and prepare your pay check.

In your pay envelope, along with your check, you will find a white slip. This is a report of your weekly pay, showing earnings for each day of the week you worked. If you do not understand how your earnings were computed, or if you have any question about it, consult your foreman.

For your own protection, no check will be given to anyone except the employee whose name appears on the check, except when an employee specifically authorizes the Company to give his check to another person.

ABOUT THOSE DEDUCTIONS

There are only two types of deductions which can be made from your pay. One type includes those required by law, such as Social Security and Federal Income taxes. The other type consists of those deductions specifically authorized by you, and approved by the Company such as those for hospital and surgical insurance, savings bonds, stock purchases, United Fund.

YOUR EARNED RATE

The term "earned rate" means either your regular hourly rate, or your average hourly earned rate including incentive. In either

case, it includes any shift differential but does not include overtime pay.

The earned rate is determined by dividing your total earnings during the third calendar quarter of the previous year by the total number of hours worked during that quarter.

If you are a new employee whose length of service is not sufficient for this method of computation, your earned rate will be based on earnings you received during the last completed pay period.

INCENTIVE SYSTEM

The incentive system provides an opportunity for production workers to increase their earnings through performance in excess of normal performance as determined by time study. Please ask your foreman if you have any question on time values.

OVERTIME AND HOLIDAY PAY

Eight consecutive hours, exclusive of the prevailing lunch period, constitutes a normal workday and five consecutive days, starting on Monday, constitutes a normal workweek.

Any time worked in excess of eight hours a day or over 40 hours a week, is classified as overtime and will be paid for at the rate of one and one-half times the regular rate, provided, however, that no employee will be paid overtime on both the daily and weekly basis for the same hours worked.

Time and one-half will be paid for all work performed on Saturdays, provided the five preceding days in the work week have been worked, unless absence on one or more of these days was due to any one of the following reasons:

- Designated holidays.
- Death in the immediate family.

- Appearance before a Court in answer to a subpoena in litigation in which the employee is not an interested party.
- Appearance before Draft Board or any board, agency or commission in response to a subpoena or order.
- Service as a juror.
- Absence due to personal illness, when supported by a certified statement from employee's physician.
- Layoff as result of lack of work.

Sunday Work All Sunday work is paid for at the rate of two times the regular rate, regardless of the number of hours worked by the employee during the previous week.

Holiday Work Any work performed on designated holidays will be paid for at the rate of two times the regular rate, in addition to the holiday pay provided for.

*(Special provisions apply to watchmen
and over-the-road truck drivers.)*

The Company is to determine the starting and quitting time and the number of hours to be worked in a day or a week. When Saturday or Sunday work is required, the Company will notify affected employees before the end of their shift on Thursday.

Employees will be notified concerning the necessity of daily overtime beyond the end of the normal shift before the lunch period on that particular day.

In order to meet the constantly changing demands of customers with regard to production requirements, it may not always be possible for the Company to fully comply with advance notification. At the same time, the Company recognizes that, in some cases previous commitments made by employees will prevent their compliance with the request for overtime work.

Consequently, it is expected that both the Company and employees will exercise the greatest degree of consideration when

overtime work is necessary, keeping in mind the fact that satisfied customers are our only source of job security.

SHIFT ADJUSTMENT

Employees working second shift will receive an extra compensation of six cents an hour in base rate for incentive classification and 12 cents an hour for non-incentive classification.

For employees working on the third shift, this extra compensation is 12 cents an hour in base rate for incentive and 18 cents an hour for non-incentive classification.

The second shift means any shift in which the majority of hours worked fall between 3 P.M. and 11 P.M. The third shift means any shift in which the majority of hours worked fall between 11 P.M. and 7 A.M.

CALL-IN PAY

Any employee reporting for work will be permitted to work a minimum of four hours or be allowed pay for four hours' time at the employee's regular hourly rate, unless the employee has been notified at any time before he leaves home on that day that his services will not be required, or if upon reporting he is unable to work because of conditions outside the control of the Company.

Employees may be assigned work in their own classifications, or substantially-similar work. If an employee refuses such assignment, he will not receive the call-in pay.

Employees who are called back after their regular hours and who do report for work will be permitted to work a minimum of four hours or be allowed pay for four hours' time at their regular hourly rate, plus overtime for the amount of time that exceeds eight hours for the given workday.

As far and practicable and consistent, all overtime hours will be rotated equally among all employees of a Department within definite classifications of work, on the basis of seniority.

CLASSIFICATIONS AND RATES

The following schedule of classifications and rates went into effect April 1, 1965, and is shown here together with the time intervals indicated for automatic rate progressions.

As noted elsewhere in this Handbook, a newly-hired employee is on probation for 90 days. If his performance during that time is satisfactory, he will receive the three-months' rate and at the end of six months from his hiring date will receive the six-months' rate. In exceptional cases, an employee may progress to the 12-months' rate any time after his probationary period, at the Company's discretion.

NON-INCENTIVE BASE RATE SCHEDULE

JOB TITLE	HIRING RATE	3 MOS.	6 MOS.	12 MOS.
1. Millwright "A"	\$2.61	\$2.66	\$2.71	\$2.82
2. Millwright "B"	2.40	2.45	2.50	2.61
3. Millwright "C"	2.19	2.24	2.29	2.40
4. Automotive Mechanic	2.61	2.66	2.71	2.82
5. Electrician "A"	2.71	2.76	2.82	2.92
6. Electrician "B"	2.50	2.55	2.61	2.71
7. Electrician "C"	2.29	2.34	2.40	2.50
8. Electrician "D"	2.08	2.13	2.19	2.29
9. Machinist "A"	2.45	2.50	2.55	2.66
10. Machinist "B"	2.24	2.29	2.34	2.45
11. Tool and Die Maker "A"	3.03	3.08	3.13	3.24
12. Tool and Die Maker "B"	2.76	2.82	2.87	2.97
13. Tool and Die Maker "C"	2.67	2.72	2.77	2.87
14. Sweeper	1.98	2.03	2.08	2.19
15. Die Setter	2.89	2.94	2.99	3.09
16. Parts Clerk	2.34	2.40	2.45	2.55
17. Parts Clerk Helper	2.08	2.13	2.19	2.29
18. Truck Driver - Semi	2.34	2.40	2.45	2.55
19. Truck Driver - Stake	2.24	2.29	2.34	2.45
20. Stock Selector	2.13	2.19	2.24	2.34
21. Material Handler	2.08	2.13	2.19	2.29
22. Group Leader	2.89	2.94	2.99	3.09

NON-INCENTIVE BASE RATE SCHEDULE (Cont.)

JOB TITLE	HIRING RATE	3 MOS.	6 MOS.	12 MOS.
23. Towmotor Operator	\$2.19	\$2.24	\$2.29	\$2.40
24. Inspector	2.29	2.34	2.40	2.50
25. Crane Operator	2.29	2.34	2.40	2.50
26. Utility Man	2.24	2.29	2.34	2.45
27. Checker Return Goods	2.55	2.61	2.66	2.76
28. Checker Return Goods Helper	2.19	2.24	2.29	2.40
29. Utility Man Production	2.34	2.40	2.45	2.55
30. Checker Repair Return Goods Cooling	2.80	2.85	2.90	3.00
31. Checker Non-Incentive	2.55	2.61	2.66	2.76

INCENTIVE BASE RATE SCHEDULE

JOB TITLE	HIRING RATE	3 MOS.	6 MOS.	12 MOS.
1. Arc Welder "A"	\$1.425	\$1.475	\$1.525	\$1.575
2. Arc Welder "B"	1.325	1.375	1.425	1.475
3. Repair Welder - Cleaner	1.425	1.475	1.525	1.575
4. Cleaner	1.375	1.425	1.475	1.525
5. Machine Operator "A"	1.425	1.475	1.525	1.575
6. Machine Operator "B"	1.375	1.425	1.475	1.525
7. Spot Welder	1.425	1.475	1.525	1.575
8. Assembler	1.375	1.425	1.475	1.525
9. Painter - Spray	1.425	1.475	1.525	1.575
10. Packer	1.375	1.425	1.475	1.525
11. Trucker	1.375	1.425	1.475	1.525
12. Checker	1.425	1.475	1.525	1.575
13. Tow Motor Operator	1.425	1.475	1.525	1.575
14. Loader	1.375	1.425	1.475	1.525

YOUR BENEFITS AT OLSEN

As a C. A. Olsen employee, you enjoy a broad program of benefits provided by the Company. Benefits are important additions to your paycheck, and they cost the Company real dollars to provide — just the same as the dollars you receive as earnings.

These benefits have increased steadily and have become more valuable over the years. As we have done in the past, we will continue to keep abreast of the trend in our industry and our County in providing benefits that rank with the best.

Following is our present policy on these benefits:

VACATIONS

When you have completed one year of service with the Company as of June 1 or December 1, you are entitled to a paid vacation, provided you have completed a minimum of 60 per cent of the pay periods during the year preceding June 1 or December 1. Vacations granted under the June 1 qualifying date will, of course, be deducted from vacation allowances determined under the December 1 date.

Vacation pay is computed on the basis of an eight-hour day and a 40-hour week, at your earned rate.

Based on length of service, the vacation schedule is as follows:

- 1 year but less than 3 years — 1 week
- 3 years but less than 5 years — 1 week and 3 days
- 5 years but less than 10 years — 2 weeks
- 10 years but less than 15 years — 2 weeks and 3 days
- 15 years and over — 3 weeks

NON-INCENTIVE BASE RATE SCHEDULE (Cont.)

JOB TITLE	HIRING RATE	3 MOS.	6 MOS.	12 MOS.
23. Towmotor Operator	\$2.19	\$2.24	\$2.29	\$2.40
24. Inspector	2.29	2.34	2.40	2.50
25. Crane Operator	2.29	2.34	2.40	2.50
26. Utility Man	2.24	2.29	2.34	2.45
27. Checker Return Goods	2.55	2.61	2.66	2.76
28. Checker Return Goods Helper	2.19	2.24	2.29	2.40
29. Utility Man Production	2.34	2.40	2.45	2.55
30. Checker Repair Return Goods Cooling	2.80	2.85	2.90	3.00
31. Checker Non-Incentive	2.55	2.61	2.66	2.76

INCENTIVE BASE RATE SCHEDULE

JOB TITLE	HIRING RATE	3 MOS.	6 MOS.	12 MOS.
1. Arc Welder "A"	\$1.425	\$1.475	\$1.525	\$1.575
2. Arc Welder "B"	1.325	1.375	1.425	1.475
3. Repair Welder - Cleaner	1.425	1.475	1.525	1.575
4. Cleaner	1.375	1.425	1.475	1.525
5. Machine Operator "A"	1.425	1.475	1.525	1.575
6. Machine Operator "B"	1.375	1.425	1.475	1.525
7. Spot Welder	1.425	1.475	1.525	1.575
8. Assembler	1.375	1.425	1.475	1.525
9. Painter - Spray	1.425	1.475	1.525	1.575
10. Packer	1.375	1.425	1.475	1.525
11. Trucker	1.375	1.425	1.475	1.525
12. Checker	1.425	1.475	1.525	1.575
13. Tow Motor Operator	1.425	1.475	1.525	1.575
14. Loader	1.375	1.425	1.475	1.525

YOUR BENEFITS AT OLSEN

As a C.A. Olsen employee, you enjoy a broad program of benefits provided by the Company. Benefits are important additions to your paycheck, and they cost the Company real dollars to provide — just the same as the dollars you receive as earnings.

These benefits have increased steadily and have become more valuable over the years. As we have done in the past, we will continue to keep abreast of the trend in our industry and our County in providing benefits that rank with the best.

Following is our present policy on these benefits:

VACATIONS

When you have completed one year of service with the Company as of June 1 or December 1, you are entitled to a paid vacation, provided you have completed a minimum of 60 per cent of the pay periods during the year preceding June 1 or December 1. Vacations granted under the June 1 qualifying date will, of course, be deducted from vacation allowances determined under the December 1 date.

Vacation pay is computed on the basis of an eight-hour day and a 40-hour week, at your earned rate.

Based on length of service, the vacation schedule is as follows:

- 1 year but less than 3 years — 1 week
- 3 years but less than 5 years — 1 week and 3 days
- 5 years but less than 10 years — 2 weeks
- 10 years but less than 15 years — 2 weeks and 3 days
- 15 years and over — 3 weeks

HOLIDAYS

At present, Olsen employees enjoy seven holidays with pay. These include: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

To be eligible for holiday pay, you must have completed your regularly-scheduled work-day immediately preceding and following the holiday, during the calendar week before, during or after the week in which the holiday falls.

(For method of computing holiday pay see section "Overtime and Holiday Pay)

GROUP INSURANCE

One of the most important benefits that add to the value of your job at C. A. Olsen is the insurance and hospitalization protection available for you and members of your families.

The Group Insurance Plan provides benefits:

- in the event of your death, and
- if you miss work because of sickness or injury not connected with your job.

The Company pays all of the cost of this plan. New employees are automatically insured in this plan after they have worked for the Company for 90 days. The benefits under the plan are:

1. \$3,500 in Life Insurance coverage.
2. An additional \$3,500 in Accidental Death or Dismemberment benefits. (This means that \$7,000 would be payable should you die by accidental means.)
3. \$45 per week income for up to 26 weeks if you are unable to work because of sickness or injury not connected with your job.

Insured employees are given a certificate from the Metropolitan Life Insurance Company which fully describes the benefits. This certificate should be kept with your valuable papers.

Hospital Expense and Surgical Operation Insurance

This optional plan protects you and your eligible dependents against the costs of hospital confinements and surgical operations.

The Company pays 70 percent of the cost of this plan and employees pay the remaining 30 percent. New employees who sign up for the plan within the first 30 days of their employment will be covered on the seventh of the month following one month's employment. Those who do not sign up within 30 days must submit satisfactory medical evidence in order to be covered.

When you or one of your eligible dependents have to go to the hospital, the plan provides payments for the hospital charges for room and board and for the "extra" charges made by the hospital. Payments toward room and board charges will be equal to the hospital daily semi-private rate for up to 120 days. Payments for the hospital extra charges are unlimited during the 120 days for which room and board benefits are payable.

Benefits are payable for charges by physicians and surgeons for operations performed on you or your eligible dependents regardless of whether the operation was performed in a hospital or elsewhere.

The amount of benefit payable is listed in the "Schedule of Operations" in your Group Insurance Plan booklet, issued by Continental Casualty Company, which also contains detailed information on your hospital and surgical coverage. Any question not answered by the booklet should be referred to the Personnel Office.

THE PENSION PLAN

At no cost to you, the Company provides a Pension Plan that pays the following benefits:

- **Normal retirement pension** at age 65 for employees retiring with over 10 years' service.
- **Early retirement pension** if you retire between ages 60 and 65 after accumulating 10 years' service.
- **Disability pension** for employees who because of sickness or injury can never again work for pay and who have at least 15 years of service when they become injured or sick.
- **Vested pension** (you take it with you). If you leave the Company for any reason after you reach age 45 and after you have 15 years of service.

The amount of monthly pension you receive is based on the amount of credited service you have accumulated up to the time of your retirement (or disability in the case of a disability pension or separation from the Company in the case of a vested pension).

For normal retirement at age 65, monthly pension — payable for life — is \$2.50 for each year of credited service accumulated before April 1, 1962 and \$2.70 for each year of credited service earned after April 1, 1962.

If you retire early, your monthly pension is the amount of normal retirement pension you had earned to the time of your early retirement reduced 6 percent for each full year you retire early.

The disability pension is \$3.75 in monthly pension for each year of credited service you had accumulated up to the time you became disabled, with a minimum of \$75 and a maximum of \$112.50. Disability pension will be reduced by one-half of any Social Security benefit for which you become eligible. When you reach 65, the disability pension stops and a normal retirement pension begins based on credited service to time of disability.

If you leave the Company with a vested pension, the amount of normal retirement pension you had accumulated up to the time you left the Company will become payable at age 65 or, if you elect, it can be paid as early as age 60 in a reduced amount.

The amount of credited service you have under the plan is determined as follows:

Service before 1958. Credited service for employment before 1958 is based on the time between your seniority date and December 31, 1957, calculated to the nearest one-tenth year.

Service after January 1, 1958, is based on the number of hours worked. You receive a full year's credit for any calendar year in which you work more than 1,700 hours. If you work less than 1,700 hours in a year, you receive one-tenth year's credit for each 170 hours worked.

You will be credited with eight hours worked for each holiday or vacation day for which you are paid. There are various other rules for hours credited while on disability, leaves of absence, etc.

For details of the Pension Plan and for specific questions on the plan, you should consult the Personnel Office.

STOCK PURCHASES

The Employee Stock Plan permits eligible employees to purchase Westinghouse Electric Corporation common stock at a discount and pay for it through payroll deductions.

Eligible employees may elect to buy stock during the first 20 days of April and October of each year. To be eligible, employees must have performed some work during the quarter-year immediately preceding the enrollment period. Complete details of the Plan are incorporated in a Prospectus which is made available to eligible employees prior to each enrollment period.

EMPLOYEE PURCHASES

Another benefit you enjoy is the opportunity to purchase Olsen products and products of Westinghouse at special low employee prices. All sales are handled through the Personnel Department.

So that the Employee Purchase Plan may be administered for the benefit of all employees, everyone should understand that:

1. Any of these specially-priced products are for your own use and are not being purchased by you for resale;
2. Any heating or air conditioning products or major appliances purchased are to be installed in a home in which you reside.

Small appliances, such as Westinghouse toasters, irons, small radios, etc., may be purchased either for your own use or to be given as gifts.

REWARDS FOR IDEAS

It's not hard to see how ideas you may have for better ways to do your job, or suggestions for improved methods anywhere in the Plant, can help us meet — and beat — the competition of other companies.

You can help yourself, and your fellow employees, as well, by turning in any suggestions you may have for improving our operations. Your ideas can mean extra cash for you, because you will be awarded a portion of the savings that result from your adopted suggestions.

There are also awards for suggestions which do not result in a measurable saving, but which accomplish such objectives as adding to the quality of our products or making our Plant an even-safer place to work.

Suggestion forms are provided in a convenient location near the main Plant entrance so you can write up your ideas. If you need help, your foreman will be happy to see that you get it.

LEAVE — DEATH IN IMMEDIATE FAMILY

In the event of a death in his immediate family, an employee will be paid up to a maximum of three days' pay, not to exceed

eight hours a day for time actually lost from work because of such death.

Pay for these days will be computed on the basis of the employee's "earned rate."

Saturdays — unless they are regularly-scheduled work days — Sundays, holidays and vacation days will not be considered as days lost in computing this pay, and no pay will be allowed for such days.

The immediate family refers to father, mother, brother, sister, spouse or children.

RULES OF CONDUCT

In any working community such as ours, certain regulations governing employee conduct on Company-owned or Company-controlled property are just as necessary as the laws governing our conduct as citizens in the communities where we live. These regulations — which aid in maintaining safe and desirable working conditions — are posted for the general guidance of employees and to assure uniform and fair application of disciplinary action, should it be necessary. The offenses listed here are not all-inclusive, but are the types which are considered misconduct and result in disciplinary action, including possible discharge.

- Deliberate damage to or misappropriation of Company property or the property of another employee.
- Stealing.
- Fighting.
- Carrying concealed weapons or explosives.
- Immoral conduct or indecency.
- Willful hampering of Olsen operations.
- Falsification of records or reports.
- Gambling or conducting gambling activities.
- Possessing or being under influence of intoxicants or narcotics.
- Sleeping on the job.
- Careless waste of material, abuse of tools or equipment.
- Insubordination, including failure to carry out definite instructions or assignments.
- Unauthorized selling, soliciting, or canvassing.

COMPANY EXHIBIT NO. 5

<u>TABLE "A"</u>	<u>NON-INCENTIVE BASE RATES</u>				<u>NO. EMPLOYEES</u>
	<u>CLASSIFICATION</u>	<u>3 Mos.</u>	<u>6 Mos.</u>	<u>12 Mos.</u>	
	Millwright "A"				
	C. A. Olsen	2.66	2.71	2.82	3
	Henry Fnce.	2.50	2.55	2.65	1
	Millwright "B"				
	C. A. Olsen	2.45	2.50	2.61	2
	Henry Fnce.	2.40	2.45	2.55	2
	Flectrician "A"				
	C. A. Olsen	2.76	2.82	2.92	2
	Henry Fnce.	2.50	2.55	2.65	1
	Flectrician "B"				
	C. A. Olsen	2.55	2.61	2.71	0
	Henry Fnce.	2.40	2.45	2.55	1
	Machinist				
	C. A. Olsen	2.50	2.55	2.66	0
	Henry Fnce.	2.40	2.45	2.55	1

COMPANY EXHIBIT NO. 5

1 Nights + .12

1 Nights + .05

COMPANY EXHIBIT NO. 5 (Cont'd)

COMPANY EXHIBIT NO. 5 (Cont'd)

TABLE "A" (Cont'd)	NON-INCENTIVE BASE RATES				NO. EMPLOYEES
	CLASSIFICATION	3 Mos.	6 Mos.	12 Mos.	
	Die Setter				
	C. A. Olsen	2.94	2.99	3.09	7
	Henry Fnce.	2.50	2.55	2.65	11
					3 Nights (2 + .12 1 + .18)
					2 Nights 2.70
	Towmotor Operator				
	C. A. Olsen	2.24	2.29	2.40	11
	Henry Fnce.	2.15	2.20	2.30	2
	Truck Driver				
	C. A. Olsen	2.40	2.45	2.55	3
	Henry Fnce.	2.35	2.40	2.50	1
	Parcel Post Clerk				
	C. A. Olsen	2.40	2.45	2.55	1
	Henry Fnce.	2.30	2.35	2.45	1
	Custodian (Sweeper)				
	C. A. Olsen	2.03	2.08	2.19	2
	Henry Fnce.			2.00	1

COMPANY EXHIBIT NO. 6

COMPANY EXHIBIT NO. 6

TABLE "B" INCENTIVE RATES (WEEK ENDING MAY 23, 1965)

CLASSIFICATION	ELYRIA			MEDINA		
	AVG. BASE	NO. EMP.	AVG. HRLY.	AVG. BASE	NO. EMP.	AVG. HRLY.
Machine Operator "A"	1.594	28	3.706	1.597	38	2.76
Machine Operator "B"	1.554	16	2.785	1.533	14	2.49
Arc Welder	1.583	15	3.808	1.53	13	3.22
Assembler	1.527	62	3.224	1.53	31	2.73
Trucker	1.542	7	3.397	1.48	4	2.74
Checker	1.590	4	3.440	1.58	2	2.87
Packer	1.525	4	2.889	1.53	3	2.76
Towmotor Operator	1.575	3	3.527	1.53	3	2.66
Loader	1.545	9	3.720	1.53	5	2.65
Painter	1.599	5	3.792	1.58	1	2.76

COMPANY EXHIBIT NO. 7

COMPARISON OF WELD ASSEMBLY —
STANDARD MINUTES INCLUDING FATIGUE,
PERSONAL AND INCENTIVE ALLOWANCES:

	<u>Elyria</u>	<u>Medina</u>
3-tube	14.220	11.605
4-tube	18.950	15.447
5-tube	23.70	22.725
6-tube	28.44	27.270

Incentive 1st Shift

The Henry Furnace Co.

Month Ending 5-30-55

Plant	Clock	In.	Classification	Actual Hourly Rate	Basic Hourly Rate	Basic Pay	Premium Pay	Total Pay	Ave. Hly. Rate - Of	Total Pmt. Earned	Reg. Work Pmt.
10	463		Millwright A	34.0	2.65	0	90.10	0	92.75	2.65	2040
10	1106		Millwright B	42.5	2.55	0	108.30	0	111.62	2.55	2550
10	2595		Millwright B	42.0	2.55	0	107.10	0	109.65	2.55	2520
10	537		Electrician E	39.8	2.65	0	105.48	0	105.48	2.65	2388
10	2566		Sweeper Operator	43.0	2.35	0	101.05	0	103.58	2.35	2580
12	2410		Mechanic	42.0	2.55	0	107.10	0	109.65	2.55	2520
40	2614		Sheet Metal Layout	43.0	2.70	0	116.10	0	120.15	2.70	2580
30	904		Die Setter	40.0	2.65	0	106.00	0	106.00	2.65	2400
20	937		Die Setter	32.0	2.65	0	84.80	0	84.80	2.65	1920
40	1466		Die Setter	42.0	2.65	0	111.30	0	113.95	2.65	2520
40	2830		Die Setter	16.0	2.65	0	42.40	0	42.40	2.65	960
40	2518		Die Setter	42.0	2.65	0	111.30	0	113.95	2.65	2520
40	1506		Die Setter	40.0	2.65	0	106.00	0	106.00	2.65	2400
40	1658		Die Setter	40.0	2.65	0	106.00	0	106.00	2.65	2400
40	2224		Sheet Metal Setting Maker	40.0	2.50	0	100.00	0	100.00	2.50	2400
40	2030		Tender Operator	40.0	2.30	0	92.00	0	92.00	2.30	2400
20	762		Tender Operator	40.0	2.30	0	92.00	0	92.00	2.30	2400
30	271		L. & L. Packer	41.9	2.40	0	100.56	0	102.84	2.40	2514
20	2332		Truck Driver	40.0	2.50	0	100.00	0	100.00	2.50	2400

For Additive 1st Shift

The Henry Furnace Co.

Week Ending 5-30-65

Emp. No.	Grade	Classification	Actual Hrs. On Duty	Base Rate	Base Pay	Prorata Pay	Rate	Rate	Rate	Total Hrs. Earned	Day Work Hrs.
50	1713	Percol Post Clerk	40.0	2.45	0	98.00	0	98.00	2.45	2400	2400
97	1634	Semi-skilled Labor	40.0	2.30	0	92.00	0	92.00	2.30	2400	2400
99	2214	Semi-skilled Labor	32.0	2.20	0	73.60	0	73.60	2.20	1520	1220
10	603	Custodian	48.0	2.00	0	96.00	0	104.00	2.00	2000	2800
11	556	Watchman	34.0	1.95	0	66.30	0	63.30	1.95	2010	2040
12	1038	Watchman	30.0	1.95	0	58.50	0	58.50	1.95	1800	1000
10	2878	Watchman	48.0	1.95	0	93.60	0	103.40	1.95	2850	2850
10	1514	Labor	40.0	1.95	0	78.00	0	78.00	1.95	2400	2400
10	1500	Labor	40.0	1.95	0	78.00	0	78.00	1.95	2400	2400
										208	

The Henry Furnace Co.

4th Incentive 2nd Shift

Week Ending 5-30-55

Dept.	Clock No.	Classification	Actual Hrs. On Job	Basic Add Rate	Basic Pay	Production Pay	Total Pay	Avg. Hrs. Rate	Total Hrs.	Per Hour
20	1670	Electrician B	40.0	2.55	102.00	0	102.00	2.55	2400	2400
40	550	Die Setter	38.0	2.55	96.90	0	96.90	2.55	2280	2280
40	259	Die Setter	37.0	2.65	100.70	0	100.70	2.65	2280	2280
0	1551	Formator Operator	33.0	2.30	81.60	139.48	97.48	2.56	2310	1800

Incentive - 2nd Shift

The Henry Furnace Co.

Week Ending 5-30-65

Plant No.	Clock	Classification	Actual Hours	Basic Rate	Basic Pay	Basic Pay	Premium Pay	Total Pay	Rate Per Hr.	Total Earnings	Day Work Hours
40	240	Mach. Oper. A	36.0	1.58	1.90	67.40	51.80	121.90	3.20	4349	920
40	678	Mach. Oper. A	36.0	1.58	1.90	60.64	23.22	85.75	2.86	2656	1236
40	774	Mach. Oper. A	33.6	1.53	1.90	60.03	37.77	97.81	2.92	3621	456
40	1596	Mach. Oper. A	30.0	1.58	1.90	57.66	4.13	63.29	2.11	1897	1194
40	1898	Mach. Oper. A	36.0	1.53	1.90	60.04	25.66	87.54	2.30	3127	742
40	225	Mach. Oper. B	32.0	1.38	1.50	49.10	14.81	53.71	1.76	2105	288
40	1703	Mach. Oper. B	39.0	1.43	1.70	56.34	24.42	80.75	2.35	2695	1650
40	1728	Mach. Oper. B	33.0	1.38	1.70	56.34	6.25	60.69	1.60	2105	642
40	2930	Mach. Oper. B	37.0	1.43	1.85	52.91	6.96	61.72	1.67	2049	900
40	2722	Mach. Oper. B	33.0	1.33	1.90	52.44	34.55	87.00	2.29	3367	882
0	2935	Mach. Oper. B	33.0	1.38	1.90	52.44	5.13	63.57	1.67	2334	234

Incentive - 1st Shift

The Henry Furnace Co.

Week Ending 5-30-63

Emp. No.	Clock No.	Classification	Actual Hrs. to House	Base Pay	Inc. Pay	Premium Pay	Total Pay	Asst. Hrsly. Rate - OT	Total Mins. Earned	Day Work Pairs
90	582	Trucker	39.5	1.48 0	52.46	61.37	119.93	3.03	4832	78
90	726	Trucker	40.0	1.48 0	59.20	61.61	120.81	3.02	4862	118
90	856	Trucker	41.0	1.52 0	61.86	57.99	89.05	2.35	3669	1806
90	1358	Trucker	42.8	1.48 0	61.25	23.73	50.64	2.17	3101	1806
90	1425	Trucker	24.0	1.48 0	42.03	13.91	50.99	2.25	1717	1128
90	2066	Trucker	41.4	1.48 0	61.27	62.27	123.54	2.98	4946	192
20	1610	Mach. Oper. A	34.2	1.58 0	53.24	32.64	85.88	2.51	3077	1196
30	439	Mach. Oper. A	40.0	1.58 0	63.20	14.50	81.76	2.04	3106	222
30	591	Mach. Oper. A	40.0	1.58 0	63.20	35.82	149.02	3.73	5660	114
30	1087	Mach. Oper. A	40.0	1.58 0	63.20	70.64	107.84	3.35	5083	132
30	1262	Mach. Oper. A	40.0	1.58 0	63.20	42.27	105.47	2.64	3971	154
30	1348	Mach. Oper. A	32.0	1.58 0	50.56	30.42	80.98	2.53	3075	174
30	2126	Mach. Oper. A	40.0	1.58 0	63.20	31.90	95.10	2.38	3612	240
30	2350	Mach. Oper. A	40.0	1.58 0	63.20	60.71	123.91	3.10	4685	174
30	2445	Mach. Oper. A	40.0	1.58 0	63.20	74.25	137.45	3.44	5221	210

Incentive - 1st Shift

Week Ending 5-30-65

The Henry Furnace Co.

Dnt. No.	Clock No.	Classification	Actual Hours	Base Add Hrs. On Rate	P. to P. by	Domina Pay	Total Pay	Ave. Hrs. Ratio	Total Hrs. Earned	Pay Hrs.
40	79	Mach. Oper. A	42.0	1.58 0	65.35	21.12	93.48	2.23	3049	416
40	91	Mach. Oper. A	40.0	1.58 0	63.20	18.22	121.42	2.79	3901	1123
40	127	Mach. Oper. A	35.9	1.58 0	55.30	34.65	92.95	2.52	3209	1128
40	233	Mach. Oper. A	40.3	1.58 0	63.67	35.12	98.79	2.45	3743	84
40	415	Mach. Oper. A	42.0	1.58 0	81.44	11.69	92.13	2.33	2343	1920
40	556	Mach. Oper. A	40.0	1.58 0	63.20	21.47	84.67	2.12	3334	504
40	606	Mach. Oper. A	40.0	1.58 0	63.20	65.57	128.77	3.22	4879	0
40	702	Mach. Oper. A	40.0	1.58 0	63.20	55.10	118.30	2.96	4318	970
40	798	Mach. Oper. A	40.0	1.58 0	63.20	46.55	109.75	2.74	3861	972
40	970	Mach. Oper. A	41.9	1.58 0	60.34	20.42	80.76	2.19	2258	1513
40	1256	Mach. Oper. A	40.0	1.58 0	63.20	50.77	113.97	2.85	4016	996
40	1371	Mach. Oper. A	33.5	1.58 0	55.02	25.67	80.69	2.33	2933	636
40	1442	Mach. Oper. A	36.2	1.58 0	53.30	56.28	109.58	3.12	4367	596
40	1546	Mach. Oper. A	42.0	1.58 0	66.36	44.04	110.40	2.63	4184	156
40	1742	Mach. Oper. A	40.0	1.58 0	63.20	22.34	85.54	2.54	3555	762
40	1810	Mach. Oper. A	40.0	1.58 0	62.00	37.44	99.44	2.51	3540	972

212

BEST COPY
from the origin

Incentive - 1st Shift

The Henry Furnace Co.

Week Ending 5-30-65

Dept. No.	Clock No.	Classification	Actual Hrs. On Incentive	Base Add Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrs. - Of	Total Mins. Earned	Day Work Mins.
40	2158	Mach. Oper. A	36.8	1.58 0	61.30	30.20	91.50	2.36	3177	1212
40	2170	Mach. Oper. A	33.0	1.58 0	52.14	23.58	75.72	2.29	2617	252
40	2278	Mach. Oper. A	40.0	1.58 0	72.32	9.46	81.78	2.04	2500	1956
40	2482	Mach. Oper. A	36.0	1.58 0	55.28	20.76	76.04	2.88	1740	60
40	2506	Mach. Oper. A	38.0	1.58 0	60.04	30.48	90.52	2.38	3146	258
40	2549	Mach. Oper. A	32.0	1.58 0	55.12	5.54	60.66	1.90	2100	700
40	2602	Mach. Oper. A	42.0	1.58 0	66.36	63.46	134.82	3.21	5091	246
40	2638	Mach. Oper. A	40.0	1.58 0	63.20	74.79	137.99	3.45	5230	0
40	2761	Mach. Oper. A	36.5	1.58 0	57.67	14.57	72.24	2.89	3847	270
40	2845	Mach. Oper. A	41.0	1.58 0	64.78	65.35	130.13	3.17	4914	234
40	2938	Mach. Oper. A	42.0	1.58 0	70.92	34.93	105.85	2.52	3509	3494

Incentive - 1st Shift

The Henry Furnace Co.

Week Ending 5-20-65

Plant	Clock	Classification	Total Hrs.	Basic Rate	Rate Add	Basic Rate	Premium Pay	Total Pay	Wk. Rate - 05	Total Hrs. Earned	Day Work Mins.
30	2202	Mach. Oper. B	37.4	1.53	0	57.22	69.83	107.05	2.06	4192	249
40	31	Mach. Oper. B	40.0	1.53	0	61.20	31.67	92.87	2.32	3304	846
40	115	Mach. Oper. B	35.0	1.53	0	56.46	33.67	90.13	2.58	3617	786
40	446	Mach. Oper. B	32.9	1.33	0	50.71	13.32	64.03	1.96	1994	1830
40	059	Mach. Oper. B	33.0	1.38	0	46.92	17.74	64.66	1.90	2604	510
40	970	Mach. Oper. B	41.6	1.38	0	61.12	10.61	71.73	1.82	2165	1710
40	1245	Mach. Oper. B	40.0	1.53	0	61.20	27.37	88.57	2.21	2937	1548
40	1418	Mach. Oper. B	40.0	1.53	0	61.20	68.36	129.56	3.24	5079	162
40	1678	Mach. Oper. B	32.0	1.53	0	48.96	10.40	59.36	2.11	2333	672
40	1662	Mach. Oper. B	40.0	1.53	0	61.20	--	61.20	2.15	2400	2400
40	1721	Mach. Oper. B	26.5	1.38	0	36.57	10.58	47.15	1.78	1764	900
40	1694	Mach. Oper. B	40.0	1.53	0	61.20	12.08	73.28	1.81	2893	723
40	1870	Mach. Oper. B	33.0	1.53	0	50.49	5.15	55.64	1.69	2093	234
40	2256	Mach. Oper. B	41.4	1.38	0	57.13	19.15	76.28	1.85	3186	342
40	2594	Mach. Oper. B	40.0	1.53	0	61.20	63.08	124.28	3.23	5060	102
40	2626	Mach. Oper. B	36.4	1.53	0	55.67	15.31	70.98	1.95	2730	522
40	2730	Mach. Oper. B	37.2	1.53	0	56.92	15.27	72.19	1.97	2775	632

Week Ending 5-30-65

The Henry Furnace Co.

Incentive - 1st Shift

Emp. No.	Clock No.	Classification	Actual Hrs. On	Base Add	Base Pay	Premium Pay	Potential Pay	Ave. Hrs. - Of	Total Mins. Earned	Day Work Mins.
40	139	Packer A	40.0	1.58 0	63.20	29.31	92.51	2.31	3066	1488
40	2014	Packer B	39.7	1.53 0	60.74	37.51	98.25	2.47	3627	660
90	1370	Packer B	40.0	1.53 0	61.20	62.55	123.75	3.12	4907	306
90	1274	Checker	39.3	1.58 0	62.09	65.23	127.32	3.24	4820	66
20	2122	Towmotor Driver	40.5	1.53 0	62.57	34.54	97.11	2.43	3749	414
40	2026	Towmotor Driver	42.0	1.53 0	64.26	36.54	100.80	2.40	3953	0
50	486	Towmotor Driver	40.0	1.53 0	62.20	61.23	123.43	3.06	4497	0
20	163	Assemblers	44.5	1.53 0	68.03	51.93	120.01	2.70	4673	258
20	190	Assemblers	41.0	1.53 0	69.55	27.25	96.80	2.36	3306	1200
20	315	Assemblers	40.0	1.53 0	62.20	35.54	97.74	2.42	3704	144
20	417	Assemblers	40.0	1.53 0	61.20	35.54	96.74	2.42	3704	144
20	465	Assemblers	40.0	1.53 0	76.08	21.05	97.13	2.43	3220	1450
20	482	Assemblers	40.0	1.53 0	61.20	35.54	96.74	2.42	3704	144
20	738	Assemblers	40.0	1.53 0	61.20	66.82	128.02	3.20	5020	120

215

Incentive - 1st Shift

The Henry Furnace Co.

Week Ending 5-30-65

Post. No.	Clock No.	Classification	Actual Hrs. On	Base Add Hrs. On	Base Pay	Premium Pay	Total Pay	Ave. Hrs. Rate - Of	Total Mins. Earned	Day Work Mins.
20	830	Assembler	40.5	1.53 0	61.97	35.75	97.72	2.41	3814	174
20	868	Assembler	40.5	1.53 0	77.15	21.05	98.20	2.42	3250	1488
20	935	Assembler	36.5	1.53 0	55.85	23.98	84.83	2.32	2943	1152
20	990	Assembler	32.0	1.53 0	57.20	21.57	78.77	2.46	2766	798
20	1020	Assembler	41.0	1.53 0	69.55	27.25	96.80	2.36	3306	1338
20	1090	Assembler	40.0	1.53 0	63.20	35.54	96.74	2.42	3784	144
20	1143	Assembler	40.1	1.53 0	76.08	21.05	97.13	2.43	3220	1458
20	1151	Assembler	44.0	1.53 0	67.32	51.71	119.03	2.71	4643	228
20	1238	Assembler	40.0	1.53 0	61.20	68.66	129.86	3.25	5092	120
20	1295	Assembler	33.0	1.53 0	55.45	19.19	74.64	2.26	2510	1158
20	1346	Assembler	39.8	1.53 0	75.78	20.78	96.56	2.43	3198	1458
20	1451	Assembler	40.0	1.53 0	61.20	35.54	95.74	2.42	3784	144
20	1522	Assembler	40.0	1.53 0	69.44	25.41	94.85	2.37	3246	1278
20	1572	Assembler	32.0	1.53 0	48.96	25.82	74.78	2.34	2923	144
20	1713	Assembler	40.0	1.53 0	71.12	39.29	110.41	2.76	3747	1560
20	1901	Assembler	32.0	1.53 0	57.20	21.57	78.77	2.46	2766	798
20	2120	Assembler	44.0	1.53 0	67.32	51.71	119.03	2.71	4643	228
20	2140	Assembler	40.0	1.53 0	76.03	21.05	97.13	2.43	3220	1458
20	2158	Assembler	32.5	1.53 0	47.71	29.03	76.73	2.42	3076	150

216

BEST COPY

from the original

Incentive - 1st Shift

The Henry Furnace Co.

Week Ending 5-30-65

Dept.	Emp. No.	Classification	Actual Hours	Base Rate	Base Add Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrly. Rate - OT	Total Mins. Earned	Day Work Mins.
20	2530	Assembler	40.0	1.53	0	76.08	21.05	97.13	2.43	3220	1458
20	2734	Assembler	40.0	1.53	0	61.20	35.54	96.74	2.42	3784	144
20	2854	Assembler	40.0	1.53	0	66.96	34.82	101.78	2.54	3340	1380
20	2910	Assembler	44.0	1.53	0	67.32	51.71	119.03	2.71	4643	228
30	67	Welder	40.0	1.53	0	61.20	67.58	128.78	3.22	5050	140
30	466	Welder	40.0	1.53	0	61.20	57.65	118.85	2.97	4648	188
30	840	Welder	30.5	1.53	0	46.67	63.01	109.68	3.60	4206	311
30	1096	Welder	43.0	1.53	0	65.79	47.63	113.42	2.64	3764	1626
30	1430	Welder	37.5	1.53	0	57.38	67.62	125.00	3.33	4902	140
30	1521	Welder	40.0	1.53	0	61.20	74.51	135.71	3.39	5322	140
30	1576	Welder	40.0	1.53	0	66.16	20.44	86.60	2.17	2899	1382
30	1706	Welder	32.0	1.53	0	48.96	41.57	90.53	2.83	3550	140
30	1930	Welder	40.0	1.53	0	61.20	70.63	131.83	3.30	5170	140
30	2386	Welder	32.0	1.53	0	48.96	52.03	100.99	3.16	3960	140
30	2542	Welder	40.0	1.53	0	61.20	61.85	123.05	3.08	4821	158
30	2650	Welder	40.0	1.53	0	61.20	42.90	104.10	2.60	4063	218
30	2722	Welder	36.4	1.53	0	55.69	58.97	114.66	3.25	4491	205

The Henry Furnace Co.										Week Ending 5-30-65		
Incentive - 1st Shift		Dept. No.	Clock	Classification	Actual Hours	Base Add Hrly. On Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrly. Rate - 50	Total Hrs. Earned	Day Work Mins.
30	2955	Welder	40.0	1.53	0	61.20	47.94	109.14	2.73	4064	448	
30	940	Painter	40.0	1.58	0	63.20	67.82	131.02	3.28	4738	522	
40	2422	Painter	40.0	1.58	0	63.20	44.00	107.20	2.68	4020	138	
40	55	Loader	40.0	1.53	0	61.20	40.44	101.64	2.54	3948	138	
40	779	Loader	40.0	1.53	0	61.20	42.28	103.48	2.59	4020	138	
40	1622	Loader	40.0	1.53	0	61.20	42.28	103.48	2.59	4020	138	
40	558	Loader	40.0	1.53	0	61.20	42.28	103.48	2.59	4020	138	
40	952	Loader	40.0	1.53	0	61.60	44.05	105.65	2.64	4077	156	

218

The Henry Furnace Company Medina, Ohio

Dept.	Wm. Incentive 1st Shift	Clock No.	Name	Classification
10	463		William Clark	Millerwright A
10	1106		Arthur Harvey	Millerwright B
10	2595		Zoltan Vergha	Millerwright B
10	537		Robert Daugherty	Electrician A
10	2566		Fred Valentine	Sweeper Operator
12	2420		Spase Stoiantschewsky	Machinist
40	2614		John Verob	Sheet Metal Layout
30	904		Blake Friedt	Die Setter
30	967		Sylvester Olles	Die Setter
40	1466		Cecil Kovack	Die Setter
40	2890		Richard Wills	Die Setter
40	2518		James Tinney	Die Setter
40	1906		Clark Overholtzer	Die Setter
40	1698		Dewitro Metzger	Die Setter
40	225+		John Silagy	Special Fitting Maker
20	2098		Walter Riley	Towmotor Operator
30	762		Loyal Dull	Towmotor Operator
90	271		Otho Boone	L. T. L. Packer
90	2338		Ocea R. Steele	Truck Driver
40	247		Weldon Bigley	Die Setter

Non-Incentive 1st Shift			The Henry Furnace Company, Medina, Ohio	
Dept.	Clock No.	Name	Classification	
90	1918	Henry Orth	Parcel Post Clerk	
90	1694	Louis Hedley	Semi-skilled labor	
90	2314	Fred Stanco	Semi-skilled labor	
10	803	Edward Ellerson	Quotidian	
10	594	Jacob Dinkelbach	Watchman	
10	1088	Alan Hall	Watchman	
10	2878	Harold Wightman	Watchman	
40	1514	Louis Kulchar	Labor	
40	1580	Almer Lillard	Labor	

Non-Incentive 2nd Shift		The Henry Furnace Company, Medina, Ohio	
Dept.	Clock No.	Name	Classification
10	1670	Jacob Mickna	Electrician B
40	590	William Dean	Die Setter
40	259	Louis Blackburn	Die Setter
40	2551	Richard Lents	Towmotor Operator

The Henry Furnace Co., Medina, Ohio

Incentive - 2nd Shift		Name	Classification
Dept.	Clock No.		
40	340	Billy Burke	Mach. Oper. A.
40	678	George Drexler	Mach. Oper. A.
40	774	Percy Dunn	Mach. Oper. A
40	1596	James Lynch	Mach. Oper. A
40	1898	Charles Morrie	Mach. Oper. A
40	286	Clyde Brady	Mach. Oper. B
40	1708	Sam Miller	Mach. Oper. B
40	1728	Densil Moss	Mach. Oper. B
40	2930	Robert Woodruff	Mach. Oper. B
40	2932	Joe L. Wray	Mach. Oper. B
40	2935	Louis Yando, Jr.	Mach. Oper. B.

The Henry Furnace Co., Medina, Ohio

Incentive - 1st Shift		Name	Classification
Dept.	Clock No.		
90	582	Ootfried Dunkelbach	Trucker
90	726	Gerald Dull	Trucker
90	856	Raymond Fleher	Trucker
90	1358	George Keith	Trucker
90	1625	Charles Maynard	Trucker
90	2866	Guy Wightman	Trucker
20	1610	Charles L. Martin	Mach. Oper. A
30	439	Foy Gasto	Mach. Oper. A
30	571	David Dennis	Mach. Oper. A
30	1085	Harvey Halliburton	Mach. Oper. A
30	1262	Tommy Hoseny	Mach. Oper. A
30	1348	James Jones	Mach. Oper. A
30	2126	Eberhardt Rucker	Mach. Oper. A
30	2350	Charles Stefan	Mach. Oper. A
30	2446	Marle Strouse	Mach. Oper. A

AVAILABLE

al bound volume

The Henry Furnace Company, Medina, Ohio

224

Incentive - 1st Shift		Name	Classification
Dept.	Clock No.		
40	79	Albert Baosuk	Mach. Oper. A
40	91	Steve Baosuk	Mach. Oper. A
40	127	Robert Baker	Mach. Oper. A
40	293	John Branan	Mach. Oper. I
40	415	Willard Canfield	Mach. Oper. A
40	556	Andrew Deise	Mach. Oper. A
40	606	John Dohargos	Mach. Oper. A
40	702	John Dytos	Mach. Oper. A
40	798	Chester Elder	Mach. Oper. A
40	970	Carmel Graham	Mach. Oper. A
40	1256	Harold Hoesy	Mach. Oper. A
40	1372	Robert Keith, Jr.	Mach. Oper. A
40	1442	Michael Klimko	Mach. Oper. A
40	1546	Edgar Lane	Mach. Oper. A
40	1742	Joe Moyer	Mach. Oper. A
40	1810	Robert McDonnell	Mach. Oper. A

BEST COPY

from the origin

The Henry Furnace Co. Medina, Ohio

Incentive - 1st Shift		Name	Classification
Dept.	Clock No.		
40	2150	Ben Sobalts	Mach. Oper. A
40	2170	Raymond Schalts	Mach. Oper. A
40	2278	Virgil Smith	Mach. Oper. A
40	2482	Ernest Stanislo	Mach. Oper. A
40	2506	Eugene Timney	Mach. Oper. A
40	2549	Jack Teyman	Mach. Oper. A
40	2602	Joseph Verab	Mach. Oper. A
40	2638	Paul Verab	Mach. Oper. A
40	2761	Will R. Wells	Mach. Oper. A
40	2845	Matthew White	Mach. Oper. A
40	2938	Frank Young	Mach. Oper. A

The Henry Furnace Co. Medina, Ohio

Incentive - 1st Shift		Name	Classification
Dept.	Clock No.		
30	2302	Joseph Stanolin	Mach. Oper. B
40	31	Kary Antal	Mach. Oper. B
40	115	Irene Baker	Mach. Oper. B
40	446	Barney Chancy	Mach. Oper. B
40	969	Bobby Graham	Mach. Oper. B
40	970	Carmel Graham	Mach. Oper. B
40	1245	Kieffer Horner	Mach. Oper. B
40	1418	Robert Kerns	Mach. Oper. B
40	1478	Helen Kovacek	Mach. Oper. B
40	1662	Aveleane Meyers	Mach. Oper. B
40	1721	William Moats	Mach. Oper. B
40	1894	Albert Moak	Mach. Oper. B
40	1970	Howard Peck	Mach. Oper. B
40	2256	Ralph Slone, Jr.	Mach. Oper. B
40	2494	Kenneth Teter	Mach. Oper. B
40	2626	Mary Vereb	Mach. Oper. B
40	2830	Bud White	Mach. Oper. B
40	307	Irene Brown	Mach. Oper. B
40	570	Luville Demoyt	Mach. Oper. B
40	1235	Sheriden Holiday	Mach. Oper. B
40	2471	Donald Sylvester	Mach. Oper. B

Incentive - 1st Shift			The Henry Furnace Co. Medias, Ohio	
Dept.	Clock No.	Name	Classification	
40	139	Andrew Ballak	Packer A	
40	2014	Kenneth Porter	Packer B	
90	1370	Robert Keith	Packer B	
90	1274	Wilbur Moser	Checker	
20	2122	Charles Roeder	Towmotor Driver	
40	2026	Thomas Price	Towmotor Driver	
90	486	Ralph Collins	Towmotor Driver	
20	163	John Barnum	Assembler	
20	190	Duane Bysinger	Assembler	
20	315	Cecil Bruffy	Assembler	
20	417	William Goodfield	Assembler	
20	465	Delmar Clevenger	Assembler	
20	402	Aaron Cogar	Assembler	
20	738	Harry Bull	Assembler	
20	170	Robert Barrett	Assembler	

The Henry Furnace Co., Medina, Ohio

228

Incentive - 1st Shift		Name	Classification
Dept.	Clock No.		
20	830	Jack Eatop	Assembler
20	868	Byron Ford	Assembler
20	935	Lloyd Pullilove	Assembler
20	990	James Gillis	Assembler
20	1020	Jerry Grim	Assembler
20	1090	Kenneth Hall	Assembler
20	1168	Leonard Rojduk	Assembler
20	1151	Donald Hendershot	Assembler
20	1238	Crellen Hopkins	Assembler
20	1295	Leonard Jackson	Assembler
20	1346	Charles Jones	Assembler
20	1451	Thomas R. Knight	Assembler
20	1522	Walfred Kurjian, Jr.	Assembler
20	1572	Charles Lovie	Assembler
20	1713	Van Miller	Assembler
20	1801	Carl McDermall	Assembler
20	2120	Wayne Roberts	Assembler
20	2140	Harold Saffie	Assembler
20	2258	George Singler	Assembler

BEST COPY

from the original

The Henry Furnace Co. Medina, Ohio

Incentive - 1st Shift			Name	Classification
Dept.	Clock No.			
20	2530		Darrell Triplett	Assembler
20	2724		Harold Warner	Assembler
20	2854		Blake Wightman	Assembler
20	2910		Donald Wine	Assembler
30	67		Darrell Bachman	Welder
30	466		Densil Cleverger	Welder
30	840		Russell Farkas	Welder
30	1096		Franklin Henry	Welder
30	1430		Roy Kinder	Welder
30	1521		Wilfred Kurjian	Welder
30	1576		Elmer Lewis	Welder
30	1706		George Miller	Welder
30	1930		George Pandur	Welder
30	2386		Paul Steingass	Welder
30	2542		Vernon Turek	Welder
30	2650		Louis Voss	Welder
30	2722		Robert Ward	Welder

Incentive - 1st Shift			The Henry Furnace Co. Medina, Ohio	
Dept.	Clock No.	Name	Classification	
30	2955	James Zenito	Welder	
30	940	Guy Purr	Painter	
40	2422	Paul Strojny	Painter	
40	55	Roy Austin	Loader	
40	379	Joschlyn Campbell	Loader	
40	558	Peter P. Deise	Loader	
40	952	Everal Omsell	Loader	
40	1622	Louis Metelin	Loader	

Non-Incentive 1st Shift

The Henry Furnace Co.

Week Ending 6-6-65

5379
8-11-33

Dept. No.	Clock No.	Classification	Actual Hours	Base Add Hrly. On Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrly. Rate - OT	Total Mins. Earned	Day Work Mins.
10	463	Millwright A	40.5	2.65 0	107.33 0		118.62	2.65	2430	2430
10	1106	Millwright B	41.0	2.55 0	104.55 0		116.16	2.55	2460	2460
10	2595	Millwright B	45.0	2.55 0	114.75 0		131.44	2.55	2700	2700
10	2566	Sweeper Operator	44.0	2.35 0	103.40 0		117.79	2.35	2640	2640
12	2410	Machinist	44.0	2.55 0	112.20 0		127.61	2.55	2640	2640
40	2614	Sheet Metal Layout	40.5	2.70 0	109.35 0		120.80	2.70	2430	2430
30	904	Die Setter	32.0	2.65 0	84.80 0		84.80	2.65	1920	1920
30	967	Die Setter	32.0	2.65 0	84.80 0		84.80	2.65	1920	1920
40	1466	Die Setter	40.5	2.65 0	107.33 0		118.62	2.65	2430	2430
40	1658	Die Setter	32.0	2.65 0	84.80 0		84.80	2.65	1920	1920
40	1906	Die Setter	36.5	2.65 0	96.71 0		102.70	2.65	2190	2190
0	2518	Die Setter	40.5	2.65 0	107.33 0		118.61	2.65	2430	2430
40	2254	Special Fitting Maker	36.5	2.50 0	98.28 0		93.82	2.50	2070	2070
20	2098	Towmotor Operator	39.5	2.30 0	90.85 0		99.71	2.30	2370	2370
30	762	Towmotor Operator	32.0	2.30 0	73.60 0		73.60	2.30	1920	1920
30	271	LTL Packer	32.0	2.40 0	76.80 0		76.80	2.40	1920	1920
30	2338	Truck Driver	32.4	2.50 0	81.00 0		81.51	2.50	1944	1944
30	1928	Parcel Post Clerk	32.0	2.45 0	78.40 0		78.40	2.45	1920	1920

21

AVAILABLE

bound volume

The Henry Furnace Co.

Week Ending 6-6-45

Non-Incentive 1st Shift

Dent. No.	Clock No.	Classification	Actual		Base Add		Base Pay	Premium Pay	Total Pay	Ave Hrly. Rate - OT	Total Mins. Earned	Day Work Mins.
			Hours	Rate	Hours	Rate						
90	1634	Semi-skilled Labor	32.0	2.30	0		73.60	0	73.60	2.30	1920	1920
90	2314	Semi-skilled Labor	32.0	2.30	0		73.60	0	73.60	2.30	1920	1920
10	803	Custodian	40.0	2.00	0		80.00	0	80.00	2.00	2400	2400
20	594	Watchman	56.0	1.95	0		109.20	0	109.20	1.95	3360	3360
10	1088	Watchman	38.0	1.95	0		74.10	0	74.10	1.95	2280	2280
10	2878	Watchman	40.0	1.95	0		78.00	0	78.00	1.95	2400	2400
40	1514	Labor	32.0	1.95	0		62.40	0	62.40	1.95	1920	1920
40	1480	Labor	38.5	1.95	0		75.08	0	75.08	1.95	2310	2310

232

Min-Incentive 2nd Shift

The Henry Furnace Co.

Week Ending 6-6-65

Dpt. No.	Classfication	Actual Hours	Base Hrly. On Rate	Base Add. On Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrly. Rate - OT	Total Mins. Earned	Day Work Mins.
10	1670 Electrician B	40.5	2.55	2.03	103.28	0	116.41	2.55	2430	2430
40	247 Die Setter	41.0	2.65	2.05	93.67	15.57	111.29	2.71	3051	1650
40	259 Die Setter	40.5	2.65	2.03	107.33	0	120.81	2.65	2430	2430
40	1551 Tommotor Operator	40.5	2.30	2.03	86.67	15.46	104.16	2.57	3017	1890

Incentive 2nd Shift

The Henry Furnace Co.

Week Ending 6-6-65

Emp.	Clock No.	Classification	Actual Hours	Base Rate	Rose Add Hrly. On Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrly. Rate - Of	Total Mins. Earned	Day Work Mins.
40	340	Mach. Oper. A	40.5	1.58	2.03	63.99	57.89	123.91	3.06	4233	732
40	678	Mach. Oper. A	35.3	1.58	1.77	55.77	18.69	76.23	2.15	2605	414
40	774	Mach. Oper. A	29.0	1.58	1.45	45.82	35.79	83.06	2.86	2848	822
40	1371	Mach. Oper. A	38.5	1.58	1.13	60.83	35.72	97.68	2.54	3425	924
40	1596	Mach. Oper. A	40.5	1.58	2.03	69.12	11.59	102.74	2.54	3409	1368
40	1898	Mach. Oper. A	34.0	1.58	1.70	58.85	9.34	69.89	2.06	2200	670
40	286	Mach. Oper. B	40.5	1.38	2.03	59.35	33.39	94.77	2.34	3047	702
40	1708	Mach. Oper. B	8.1	1.43	.41	11.58	.0.	11.99	1.48	417	78
40	1726	Mach. Oper. B	40.5	1.38	2.03	66.28	14.64	82.95	2.05	2716	1440
40	2930	Mach. Oper. B	36.0	1.43	1.81	51.47	20.72	74.00	2.06	2796	480
40	2932	Mach. Oper. B	39.5	1.38	1.98	60.67	27.92	90.57	2.29	3250	1110
40	2935	Mach. Oper. B	40.5	1.38	2.03	55.89	20.62	78.44	1.94	2668	1182

24

BEST COPY

from the origin

Incentive - 1st Shift

The Henry Furnace Co.

Week Ending 6-6-65

Dept. No.	Clock No.	Classification	Actual Hrs. Rate	Base Add Hrs. Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrs. Rate - OT	Total Mins. Earned	Day Work Mins.
90	582	Trucker	36.2	1.48 0	57.02	50.53	107.55	2.97	4220	252
90	726	Trucker	32.0	1.48 0	47.36	50.53	97.89	3.06	3968	0
90	856	Trucker	33.2	1.48 0	49.14	25.78	74.92	2.26	2875	510
90	1358	Trucker	33.2	1.48 0	49.14	24.23	73.37	2.21	2705	846
90	1625	Trucker	33.2	1.48 0	53.70	20.47	76.17	2.29	2705	846
90	2866	Trucker	32.0	1.48 0	47.36	50.53	97.89	3.06	3968	0
20	1610	Mach. Oper. A	21.4	1.58 0	33.52	37.06	70.58	3.30	2640	216
30	439	Mach. Oper. A	32.0	1.58 0	50.56	37.43	87.99	2.75	3342	70
30	571	Mach. Oper. A	32.0	1.58 0	50.56	58.62	109.18	3.41	4146	60
30	1085	Mach. Oper. A	34.0	1.58 0	51.02	33.78	84.80	2.49	2968	1080
30	1262	Mach. Oper. A	32.0	1.58 0	50.56	49.71	100.27	3.13	3809	84
30	1348	Mach. Oper. A	32.0	1.58 0	50.56	47.56	98.12	3.07	3726	06
30	2126	Mach. Oper. A	32.0	1.58 0	50.56	55.72	106.28	3.32	4036	0
30	2350	Mach. Oper. A	32.0	1.58 0	50.56	37.91	88.47	2.76	3242	270
30	2446	Mach. Oper. A	32.0	1.58 0	50.56	59.83	110.39	3.45	4192	12
40	79	Mach. Oper. A	36.5	1.48 0	57.67	17.11	74.78	2.05	2566	1062
40	91	Mach. Oper. A	32.0	1.58 0	50.56	46.64	97.20	3.04	3617	294

235

AVAILABLE

al bound volume

Week Ending 6-6-65

The Henry Furnace Co.

Incentive - 1st Shift

Dept.	Clock No.	Classification	Actual Hrly. On		Base Add Hrly. Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrly. Rate - OT	Total Mins. Earned	Day Work Hrs.
			Hour	Rate							
40	127	Mach. Oper. A	32.0	1.58	0	55.12	36.04	91.16	2.85	3063	1164
40	293	Mach. Oper. A	38.4	1.58	0	60.67	44.02	104.69	2.73	3976	0
40	415	Mach. Oper. A	32.0	1.58	0	59.68	23.72	83.40	2.61	2760	1120
40	550	Mach. Oper. A	35.0	1.58	0	55.30	24.17	79.47	2.27	2984	114
40	556	Mach. Oper. A	32.0	1.58	0	50.56	13.46	64.02	2.00	2193	654
40	606	Mach. Oper. A	32.0	1.58	0	50.56	55.18	105.74	3.30	4014	0
40	702	Mach. Oper. A	36.5	1.58	0	57.67	60.45	118.12	3.24	4322	696
40	798	Mach. Oper. A	32.0	1.58	0	50.56	33.23	83.79	2.62	2922	928
40	970	Mach. Oper. A	40.5	1.58	0	63.99	45.10	109.09	2.69	3772	1062
40	1256	Mach. Oper. A	38.5	1.58	0	60.83	64.46	125.29	3.25	4643	372
40	1442	Mach. Oper. A	29.5	1.58	0	49.74	40.95	90.69	3.07	3308	550
40	1546	Mach. Oper. A	40.5	1.58	0	63.99	60.14	124.13	3.06	4366	144
40	1742	Mach. Oper. A	36.5	1.58	0	57.67	40.43	98.10	2.69	3508	726
40	1810	Mach. Oper. A	38.5	1.58	0	59.31	39.94	99.25	2.58	3771	420
40	2158	Mach. Oper. A	30.9	1.58	0	48.82	33.74	82.56	2.67	2960	744
40	2170	Mach. Oper. A	40.0	1.58	0	63.20	27.99	91.19	2.28	3410	168
40	2278	Mach. Oper. A	32.0	1.58	0	50.56	11.86	62.42	1.95	1920	1920

12

BEST COPY
from the origin

AVAILABLE
bound volume

Incentive - 1st Shift

The Henry Furnace Co.

Week Ending 6-6-65

Dept.	Clock No.	Classification	Actual Hours	Base Add Mrly. On Rate	Base Pay	Premium Pay	Total Pay	Ave. Mrly. Rate - OT	Total Mins. Earned	Day Work Mins.
40	2482	Mach. Oper. A	40.5	1.58 0	63.99	78.99	142.98	3.53	5419	42
40	2506	Mach. Oper. A	39.5	1.58 0	62.41	55.02	117.43	2.97	4435	326
40	2549	Mach. Oper. A	28.5	1.58 0	45.03	17.31	62.34	2.19	2362	24
40	2602	Mach. Oper. A	40.5	1.58 0	63.99	63.02	127.01	3.14	4804	84
40	2638	Mach. Oper. A	32.0	1.58 0	50.56	59.13	109.69	3.43	4167	6
40	2761	Mach. Oper. A	39.5	1.58 0	64.97	46.64	111.61	2.83	4072	486
40	2845	Mach. Oper. A	39.5	1.58 0	62.41	73.43	135.84	3.44	5055	348
40	2938	Mach. Oper. A	40.5	1.58 0	66.55	41.11	107.66	2.66	3639	1248
30	2302	Mach. Oper. B	32.0	1.53 0	48.96	54.68	103.64	3.24	4065	45
40	31	Mach. Oper. B	32.0	1.53 0	48.96	13.21	62.17	1.94	2171	628
40	115	Mach. Oper. B	32.0	1.53 0	48.96	34.47	83.43	2.61	2903	1020
40	307	Mach. Oper. B	28.5	1.53 0	43.61	26.07	70.48	2.47	2671	372
40	446	Mach. Oper. B	25.0	1.38 0	34.50	4.55	39.05	1.56	1305	672
40	570	Mach. Oper. B	20.5	1.53 0	31.37	6.98	38.35	1.87	1402	684
40	969	Mach. Oper. B	40.5	1.38 0	55.89	9.37	65.26	1.61	2422	534
40	1235	Mach. Oper. B	35.0	1.38 0	48.30	15.07	63.37	1.81	2010	1452
40	1245	Mach. Oper. B	35.0	1.53 0	53.56	26.16	79.72	2.28	2869	936

Incentive - 1st Shift The Henry Furnace Co. Week Ending 6-6-65

Dept.	Clock No.	Classification	Actual Hours	Base Add Hrly. On Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrly. Rate - Of	Total Wks. Earned	Day Work Mins.
40	1418	Mach. Oper. B	32.0	1.53 0	48.96	56.56	105.52	3.30	4136	0
40	1478	Mach. Oper. B	31.5	1.53 0	53.16	8.36	61.52	1.95	2082	1230
40	1662	Mach. Oper. B	32.0	1.53 0	48.96	6.15	55.11	1.72	1820	1026
40	1894	Mach. Oper. B	32.0	1.53 0	48.96	26.97	75.93	2.37	2801	498
40	1970	Mach. Oper. B	39.5	1.53 0	60.44	10.87	71.31	1.81	2467	828
40	2256	Mach. Oper. B	35.0	1.38 0	48.30	22.16	70.46	2.01	2783	540
40	2471	Mach. Oper. B	40.0	1.53 0	64.30	38.37	102.67	2.57	3890	354
40	2494	Mach. Oper. B	32.0	1.53 0	48.96	56.11	105.07	3.28	4119	0
40	2626	Mach. Oper. B	32.0	1.53 0	53.92	10.48	64.40	2.01	2089	1392
40	2830	Mach. Oper. B	32.0	1.53 0	48.96	18.84	67.80	2.12	2521	462
40	139	Packer A	32.0	1.58 0	50.56	35.49	86.05	2.69	3182	366
40	2014	Packer B	40.5	1.53 0	61.97	43.72	105.69	2.61	3078	852
90	1370	Packer B	32.0	1.53 0	48.96	50.34	99.30	3.10	3071	70

25
08

BEST COPY
from the original

ir active - 1st Shift

The Henry Furnace Co.

Week Ending 6-6-63

Dept. No.	Clock No.	Classification	Actual Hrs.	Base Add Hrs. Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrs. Rate - OT	Total Mins. Earned	Day Work Hrs.	
20	1274	Checker	32.0	1.58	0	50.56	53.93	104.49	3.27	3968	0
20	2122	Tomotor Driver	32.1	1.53	0	59.83	61.10	100.93	2.58	3947	36
40	2026	Tomotor Driver	40.5	1.53	0	61.97	32.82	94.79	2.34	3717	0
50	1944	Tomotor Driver	40.0	1.53	0	61.20	60.35	121.55	3.04	4767	0
20	163	Assembler	40.0	1.53	0	61.21	65.95	127.16	3.18	4978	30
20	170	Assembler	30.5	1.53	0	46.67	53.37	100.04	3.28	3923	0
20	190	Assembler	36.0	1.53	0	54.97	41.19	96.16	2.67	3736	150
20	315	Assembler	35.0	1.53	0	53.55	38.37	91.92	2.63	3590	54
20	417	Assembler	35.0	1.53	0	53.55	38.37	91.92	2.63	3590	54
20	465	Assembler	39.5	1.53	0	65.48	32.42	97.90	2.48	3406	1194
20	482	Assembler	35.0	1.53	0	53.55	38.37	91.92	2.63	3590	54
20	738	Assembler	35.0	1.53	0	53.55	60.50	114.05	3.26	4460	30
20	830	Assembler	40.0	1.53	0	63.98	38.59	102.57	2.56	3890	354
20	868	Assembler	39.5	1.53	0	65.48	32.42	97.90	2.48	3406	1194
20	935	Assembler	35.0	1.53	0	53.55	51.63	105.18	3.01	3992	342

239

AVAILABLE

al bound volume

Week Ending 6-6-65

The Henry Furnace Co.

Incentivo - 1st Shift

Dpt.	Clock No.	Classification	Actual Hrs. On Rate	Base Add Hrs. On Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrs. - OT	Total Hrs. Earned	Day Work Hrs.
20	990	Assembler	35.0	1.53 0	53.55	37.16	90.71	2.59	3538	150
20	1020	Assembler	40.5	1.53 0	64.75	41.19	105.94	2.62	4006	420
20	1090	Assembler	35.0	1.53 0	53.55	38.37	91.92	2.63	3590	54
20	1148	Assembler	39.5	1.53 0	65.48	39.42	97.90	2.48	3406	1194
20	1151	Assembler	30.5	1.53 0	46.67	.. 37	100.04	3.28	3923	0
20	1238	Assembler	35.0	1.53 0	53.55	53.83	107.38	3.07	4058	378
20	1295	Assembler	36.0	1.53 0	55.08	41.19	96.27	2.67	3736	150
20	1346	Assembler	35.0	1.53 0	58.59	30.65	89.24	2.55	3066	1194
20	1451	Assembler	35.0	1.53 0	53.55	37.37	91.92	2.63	3590	54
20	1522	Assembler	34.2	1.53 0	52.33	36.50	88.83	2.60	3444	150
20	1572	Assembler	35.0	1.53 0	53.55	38.37	91.92	2.63	3590	54
20	1713	Assembler	35.0	1.53 0	53.55	59.29	112.84	3.22	4306	294
20	1801	Assembler	40.5	1.53 0	61.97	42.97	104.94	2.59	4076	150
20	2120	Assembler	39.5	1.53 0	60.44	65.74	126.18	3.19	4948	0
20	2140	Assembler	35.0	1.53 0	58.59	30.65	89.24	2.55	3066	1194

240

BEST COPY

from the origin

Incentive - 1st Shift

The Henry Furnace Co.

Week Ending 6-6-65

Dept. No.	Clock No.	Classification	Actual Hours	Base Add Hrly. On Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrly. Rate - OT	Total Mins. Earned	Day Work Mins.
20	2258	Assembler	40.0	1.53 0	63.96	38.59	102.57	2.56	3890	334
21	2530	Assembler	39.5	1.53 0	65.48	32.42	97.90	2.48	3406	1194
20	2734	Assembler	35.0	1.53 0	53.55	38.37	91.92	2.63	3590	54
20	2854	Assembler	35.0	1.53 0	53.55	38.51	92.06	2.63	3264	732
20	2910	Assembler	39.5	1.53 0	60.44	65.74	126.18	3.19	4948	0
30	67	Welder	32.0	1.53 0	48.96	63.04	112.00	3.50	4392	0
30	144	Welder	32.0	1.53 0	48.96	42.19	91.15	2.85	3525	180
30	840	Welder	31.9	1.53 0	48.81	62.21	111.02	3.48	4348	18
30	1096	Welder	34.0	1.53 0	52.02	37.41	89.43	2.63	2977	1244
30	1321	Welder	32.0	1.53 0	48.96	62.11	111.07	3.47	4355	0
30	1576	Welder	37.0	1.53 0	56.61	49.42	106.03	2.87	4140	66
30	1706	Welder	32.0	1.53 0	48.96	58.57	107.53	3.36	4217	0
30	1930	Welder	32.0	1.53 0	48.96	64.87	113.83	3.56	4464	0
30	2385	Welder	31.9	1.53 0	48.81	59.46	108.27	3.39	4246	0
30	2542	Welder	32.0	1.53 0	48.96	58.95	107.91	3.37	4182	120

Incentive - 1st Shift Week Ending 6-6-65

The Henry Furnace Co.

Dept. No.	Clock No.	Classification	Actual Hrs.	Base Hrs. On Rate	Base Pay	Premium Pay	Total Pay	Ave. Hrs. Rate	Total Hrs. Earned	Day Work Mins.
30	2650	Welder	32.0	1.53 0	56.61	51.71	108.32	2.93	4110	362
30	2722	Welder	32.0	1.53 0	48.96	64.23	113.19	3.54	4439	0
30	2955	Welder	32.0	1.53 0	56.61	63.42	120.03	3.24	4547	218
40	940	Painter	32.0	1.58 0	67.82	39.98	107.80	2.91	3574	1140
40	2422	Painter	39.5	1.58 0	62.41	47.02	110.23	2.79	4186	0
40	55	Loder	38.5	1.53 0	58.21	43.03	101.99	2.65	3999	0
40	379	Loder	39.5	1.53 0	60.44	46.36	106.80	2.70	4186	0
40	558	Loder	38.5	1.53 0	60.44	46.36	106.80	2.70	4186	0
40	952	Loder	9.0	1.53 0	13.77	10.62	24.39	2.71	956	0
40	1622	Loder	39.5	1.53 0	60.44	46.36	106.80	2.70	4186	0

The Henry Furnace Company, Mad na, Ohio

Men-Incentive 1st Shift	Dept.	Clock No.	Name	Classification
10	10	463	William Clark	Millerwright A
10	10	1106	Arthur Harvey	Millerwright B
10	10	2595	Zoltan Vargha	Millerwright B
10	10	537	Robert Daugherty	Electrician A
10	10	2566	Fred Valentine	Sweeper Operator
12	12	2410	Spas Stoiantschewsky	Machinist
40	40	2614	John Voreb	Sheet Metal Layout
30	30	904	Blake Friedt	Die Setter
30	30	967	Sylvester Gilles	Die Setter
40	40	1466	Cecil Kovack	Die Setter
40	40	2890	Richard Wille	Die Setter
40	40	2518	James Timney	Die Setter
40	40	1906	Clark Oberholtzer	Die Setter
40	40	1658	Deviro Metzger	Die Setter
40	40	2254	John Silagyi	Special Fitting Maker
20	20	2098	Walter Riley	Townmotor Operator
30	30	762	Loyal Dull	Townmotor Operator
90	90	271	Otho Boone	L. T. L. Packer
90	90	2138	Osea R. Steele	Trunk Driver
40	40	247	Heldon Bigley	Die Setter

AVAILABLE

al bound volume

The Henry Furness Company, Medina, Ohio

Non-Incentive 1st Shift

Dept.	Clock In.	Name	Classification
90	1018	Henry Orth	Parcel Post Clerk
90	1634	Louis Medley	Semi-skilled labor
90	2314	Fred Stanco	Semi-skilled labor
10	801	Edward Killaroon	Custodian
10	591	Jacob Dinkelbach	Watchman
10	1038	Adam Hall	Watchman
10	2878	Harold Wightman	Watchman
40	1514	Louis Kulchar	Labor
40	1580	Elmer Lillard	Labor

The Henry Furnace Company Medina, Ohio

Non-Incentive 2nd Shift			Classification	
Dept.	Clock No.	Name	Electrician II	Die Setter
10	1670	Jacob Michna	Die Setter	Die Setter
40	550	William Dean	Die Setter	Die Setter
40	259	Leung Blackburn	Die Setter	Die Setter
50	1554	Richard Lantz	Die Setter	Die Setter

The Henry Furnace Co., Medina, Ohio

Incentive - 2nd Shift		Classification	
Dept.	Clock No.	Name	
40	140	Billy Burke	Mach. Oper. A.
40	673	George Drexler	Mach. Oper. A.
40	774	Percy Dunn	Mach. Oper. A.
40	1596	James Lynch	Mach. Oper. A.
40	1893	Charles Morris	Mach. Oper. A.
40	286	Clyde Brady	Mach. Oper. B.
40	1703	Sam Miller	Mach. Oper. B.
40	1728	Densil Moss	Mach. Oper. B.
40	2330	Robert Woodruff	Mach. Oper. D.
40	2932	Joe L. Wray	Mach. Oper. B.
40	2935	Louis Yando, Jr.	Mach. Oper. B.

The Henry Furnace Co., Medina, Ohio			
Incentive - 1st Shift		Name	Classification
Dapt.	Clock No.		
90	582	Cottfried Dunkelbach	Trucker
90	726	Gerald Dull	Trucker
90	856	Raymond Fisher	Trucker
90	1358	George Keith	Trucker
90	1625	Charles Maynard	Trucker
90	2866	Guy Wightman	Trucker
20	1610	Charles L. Martin	Mach. Oper. A
30	439	Foy Cacio	Mach. Oper. A
30	571	David Dennis	Mach. Oper. A
30	1085	Harvey Halliburton	Mach. Oper. A
30	1262	Walter Kasey	Mach. Oper. A
30	1340	James Jones	Mach. Oper. A
30	2126	Bernhardt Rucker	Mach. Oper. A
30	2350	Charles Stefan	Mach. Oper. A
30	2446	Merle Strouse	Mach. Oper. A

AVAILABLE

bound volume

Incentive - Dept.	Dept. No.	Name	Position
40	5756	Charles E. Egan	Mach. Oper. A
40	5810	Albert E. Egan	Mach. Oper. A
40	5827	Robert E. Egan	Mach. Oper. A
40	5833	Robert E. Egan	Mach. Oper. A
40	6115	Willard C. Egan	Mach. Oper. A
40	5955	Andrew Deles	Mach. Oper. A
40	6006	John Dohanyos	Mach. Oper. A
40	7112	John Drows	Mach. Oper. A
40	7998	Classter Elder	Mach. Oper. A
40	9778	Carroll Graham	Mach. Oper. A
40	1255	Harold Honey	Mach. Oper. A
40	1377	Robert Keith, Jr.	Mach. Oper. A
40	1412	Michael Klusko	Mach. Oper. A
40	1440	Edgar Lane	Mach. Oper. A
40	1742	Joe Meyer	Mach. Oper. A
40	1813	Robert McDonnell	Mach. Oper. A

The Henry Furnace Co., Medina, Ohio

Incentive - 1st Shift			Name	Classification
Dept.	Clock No.			
40	2158		Ben Schalte	Mach. Oper. A
40	2170		Raymond Schalte	Mach. Oper. A
40	2278		Virgil Salt	Mach. Oper. A
40	2432		Ernest Scanisalo	Mach. Oper. A
40	2506		Eugene Timney	Mach. Oper. A
40	2559		Jack Teyman	Mach. Oper. A
40	2602		Joseph Verob	Mach. Oper. A
40	2638		Paul Verob	Mach. Oper. A
40	2761		Will R. Welle	Mach. Oper. A
40	2845		Matthew White	Mach. Oper. A
40	2938		Frank Young	Mach. Oper. A

The Henry Furnace Co. Medina, Ohio

250

Incentive - 1st Shift	Dept.	Clock #	Name	Classification
	30	240	Joseph Standin	Mach. Oper. B
	40	31	Gary Antai	Mach. Oper. B
	40	34	Irene Baker	Mach. Oper. B
	40	46	Burley Cusley	Mach. Oper. B
	40	68	Lucy Graham	Mach. Oper. B
	40	70	Carroll Graham	Mach. Oper. B
	40	1245	Kaeffer Horner	Mach. Oper. B
	40	125	Robert Kerne	Mach. Oper. B
	40	1278	Robert Kuvack	Mach. Oper. B
	40	1332	Almaene Kuyers	Mach. Oper. B
	40	1721	William Lewis	Mach. Oper. B
	40	1894	Albert Math	Mach. Oper. B
	40	1970	Edward Peck	Mach. Oper. B
	40	2256	Ralph Simon, Jr.	Mach. Oper. B
	40	2474	Kenneth Teter	Mach. Oper. B
	40	2626	Mary Vereb	Mach. Oper. B
	40	2630	Eud W. to	Mach. Oper. B
	40	307	Irene Brown	Mach. Oper. B
	40	570	Laellie Demoyk	Mach. Oper. B
	40	1235	Sheridan Wolday	Mach. Oper. B

BEST COPY

from the original

Incentive - 1st Shift.		The Henry Furness Co. Machine Oh.	
Dept.	Clock No.	Name	Classification
40	139	Andrew Blazek	Packer A
40	204	Kenneth Porter	Packer B
90	1370	Robert Keith	Packer B
90	1274	Wilbur Hoesy	Checker
20	2122	Charles Reeder	Towmotor Driver
40	2026	Thomas Price	Towmotor Driver
90	486	Ralph Collins	Towmotor Driver
20	163	John Barnum	Assembler
20	190	Duane Baysinger	Assembler
20	312	Cecil Bruffy	Assembler
20	417	William Canfield	Assembler
20	465	Delmar Clevenger	Assembler
20	482	Aaron Cogar	Assembler
20	734	Harry Dull	Assembler
20	170	Robert Barrett	Assembler

AVAILABLE

bound volume

The Henry Furnace Co. Medina, Ohio

John, C. 1940

Incentive Int. 1940

Dept. 1940

Assembler

John, C. 1940

Assembler

Byron Ford

Assembler

Lionel Muldrow

Assembler

James C. 1940

Assembler

Harry Gray

Assembler

Kenneth Hall

Assembler

Leonard H. 1940

Assembler

Donald H. 1940

Assembler

Carlton Hopkins

Assembler

Leonard Jackson

Assembler

Charles Jones

Assembler

Thomas R. Knight

Assembler

Walter K. 1940

Assembler

Charles Lewis

Assembler

Wm. Miller

Assembler

Carl McDonnell

Assembler

Wayne Roberts

Assembler

Wm. S. 1940

Assembler

George S. 1940

... Furn Co. Medina, Ohio

Incentive - 1st Shift	Dept.	Clock No.	Name	Classification
20	2530	2530	Farrell Triplett	Assembler
20	2734	2734	Harold Warner	Assembler
20	2854	2854	Glabe Wightman	Assembler
20	2920	2920	Donald Wilco	Assembler
30	67	67	Barrell Boehman	Welder
30	465	465	Densil Cleveland	Welder
30	840	840	Russell Parkes	Welder
30	1026	1026	Franklin Henay	Welder
30	2430	2430	Roy Kinder	Welder
30	2521	2521	Walfred Kurjian	Welder
30	2576	2576	Elmer Lomas	Welder
30	2704	2704	George Miller	Welder
20	1730	1730	George Pandur	Insider
30	2380	2380	Paul Steinhaus	Welder
30	2542	2542	Vernon Turek	Welder
30	2650	2650	Louis Veres	Welder
30	2722	2722	Robert Ward	Welder

AVAILABLE

bound volume

Incentive Rate	Rate	Name	Classification	The Harry Furness Co. Medina, Ohio
30	235	Jamesposito	Printer	
30	940	Guy Furr	Printer	
40	2422	Paul Strojny	Printer	
40	55	Wm Austin	Printer	
40	379	J. Schlyn Campbell	Printer	
40	598	Peter P. Dolan	Printer	
40	950	Everal Omsell	Printer	
40	3522	Louis Matulin	Printer	

Incentive Classification

Week Ending 2/10/65

Emp.	Clock	Job Class.	Act. Hrs.	Base Hour Rate	Shift Prem. Rate	Base Pay	Prem. Pay	Total Pay	Avg. Hour. Rate	Total Min. Earned	Day Work Hrs.
Are Welder "A"											
10	0301	William G. Anford, Jr.	40.0	1.575		63.00	93.85	156.85	3.921	59.75	
11	1581	Joseph Cibrik	40.0	1.575		63.00	85.06	148.06	3.701	5507	265
12	2645	Walter Fabien	40.0	1.575		63.00	93.39	156.39	3.909	5958	
13	3605	Marion L. Givha	40.0	1.575		63.00	93.24	156.24	3.906	5952	
14	4307	Robert Kanneberg	40.0	1.575		63.00	94.28	157.28	3.932	5991	
15	6443	Edward McCracken	40.0	1.575		63.00	89.27	152.27	3.806	5537	325
16	6923	Frank Pasodyn	40.0	1.575		63.00	91.01	154.01	3.850	5736	263
17	7615	Leland Sebold	40.0	1.575		63.00	93.37	156.37	3.909	5930	54
18	8782	Robert Toth	40.0	1.575		63.00	75.54	138.54	3.463	5037	466
19	9823	Robert Youngberg	40.0	1.575		63.00	93.72	156.72	3.918	5970	
20	9913	Peter Zaleski	40.0	1.575		63.00	74.99	137.99	3.449	5061	240
21	0641	Ray Blackwell	40.0	1.575	.05	63.00	91.11	154.11	3.853	5871	236
22	1003	Johna Fortis	40.0	1.575	.06	63.00	70.55	133.55	3.388	4871	198
23	9735	Harry Yearley	40.0	1.575		63.00	96.92	162.92	4.058	5463	
Roanoke Welder "C"											
30	4266	Frederic Jacoby	40.0	1.575		63.00	35.67	98.67	2.466	3591	334
31	5406	George Furch	39.2	1.575		61.73	29.73	91.46	2.333	3357	323
Roanoke Operator "A"											
40	2459	Charles Driggs	40.0	1.575		63.00	60.83	123.83	3.095	4462	109
41	0189	Robert Amick	40.0	1.575		63.00	95.63	158.63	3.965	6042	
42	1220	Alfred Doyle	40.0	1.575		63.00	95.51	158.51	3.962	6037	23
43	1333	George Gouthro	40.0	1.575		63.00	77.73	140.73	3.518	5560	180
44	2511	James Oliver	40.0	1.575		63.00	82.01	145.01	3.625	5433	442
45	2676	Joe Varkas	40.0	1.575		63.00	97.72	160.72	4.018	6037	
46	4370	Robert Jewett	40.0	1.575		63.00	95.51	158.51	3.942	6037	90
47	6623	Richard Kozak	39.9	1.575		62.84	82.53	145.39	3.643	5493	44
48	6403	John O'Brien	23.1	1.575		36.38	44.80	81.18	3.514	3071	
49	0848	Michael Breko	40.0	1.575		63.00	94.95	157.95	3.948	6014	

10-4

Inconclusive Classification

Week ending 5/30/67

**Total
Min.
Earned**

**Hour
Rate**

**Total
Pay**

**Hours
Pay**

**Base
Pay**

**Shift
Rate**

**Act.
Hours**

Job Class.

**Clock
#**

Dept.

Machine Operator "A"

60	1176	James Burgess	3.0	1.575	12.60	39	32.13	4.016	1223	146
60	3129	H. G. Grabenstatter	40.0	1.575	63.00	52.25	115.25	2.881	4317	86
60	3370	Wade Hammond	40.0	1.575	63.00	72.94	136.94	3.423	5172	105
60	4326	Frank Jeffers	22.0	1.575	50.40	19.39	107.79	3.430	4102	136
60	5778	Marvin Miles	40.0	1.575	63.00	77.32	160.32	3.508	5277	
60	6293	Ted Monday	40.0	1.575	63.00	95.45	158.45	3.961	6033	
60	7073	Willie Payne	40.0	1.575	63.00	94.95	157.95	3.948	6014	
60	7403	Ronald Rice	31.9	1.575	50.24	58.13	118.37	3.710	4508	135
60	7677	Harold Solling	32.0	1.575	50.40	40.06	90.46	2.826	3377	
60	7950	Richard Smith	40.0	1.575	63.00	90.68	153.68	3.842	5833	149
60	9342	Paul J. M. Thompson	40.0	1.575	63.00	78.62	141.62	3.540	5319	546
60	8982	Robert Varn-Zell	40.0	1.575	75.12	68.94	144.06	3.601	4983	

Machine Operator "A"

40	0151	Floyd Allen	40.0	1.575	55.40	79.62	145.09	3.677	5219	30
40	1054	Michael Arkich	40.0	1.575	65.40	91.13	163.13	4.078	5986	
40	2679	Juan Pelliciano	40.0	1.575	65.40	91.13	163.13	4.078	5986	
40	6053	Edward Ibbotson	40.0	1.575	65.40	87.70	153.10	3.827	5600	37
40	7336	Clarence Owen	40.0	1.575	65.40	31.20	129.30	3.532	4715	125

Machine Operator "A"

40	1813	Lowell Oampton	40.0	1.575	67.30	102.31	170.11	4.252	6007	40
40	1369	Charles Reeves	40.0	1.575	55.40	77.72	132.22	2.955	4194	

Machine Operator "g"

40	6402	Larry Johnston	40.0	1.675	59.00	25.20	84.20	2.105	3375	295
40	7140	Paul Dean Perry	40.0	1.675	59.00	26.69	85.69	2.142	3486	82
40	3532	Alan Thompson	32.0	1.675	48.80	41.18	89.98	2.811	3377	343
40	9380	Diana Whalen	40.0	1.675	59.00	25.17	84.17	2.099	3294	178

Executive Committee:

Rec'd Encls 5/24/62

Dept.	Clock	Emp.	Job Class.	Rate	Hour	Day	Rate	Hour	Day	Total	Wk.	Wk.
			Machine Operator "D"									
40	0:50		Richard Brown	40.0	1.525			51.11		122.11	3.051	4743
50	4:00		William Allen	60.0	1.525			56.64		117.64	2.936	4759
			Machine Operator "D"									
40	1:00		Charles Anderson	35.5	1.425			15.11		63.35	2.023	2329
40	1:25		David Anderson	40.0	1.475			53.11		114.91	2.870	4578
50	5:15		Paula M. Tucker, Jr.	40.0	1.525			69.61		130.01	3.250	4781
61	6:54		Ernie Hansen	40.0	1.525			65.63		129.03	3.225	4836
40	8:00		Frank Wierst	40.0	1.525			72.10		135.80	3.395	5113
60	6:30		Charles Johnson	40.0	1.526			74.65		139.86	3.497	5201
			Machine Operator "D"									
40	1:00		Joseph E. Ego	40.0	1.525			36.67		106.67	2.611	3626
50	5:00		John E. Ego	55.9	1.525			15.56		66.04	2.102	2461
60	3:35		Robert E. Ego	40.00	1.475			34.23		98.03	2.450	3588
			Shop Helper									
40	2:59		William Ellison	40.0	1.575			84.77		147.77	3.694	5627
40	3:09		William Ellison	40.0	1.575			76.57		139.55	3.488	5285
40	4:30		Robert E. Ego, Jr.	41.0	1.575			81.31		147.89	3.667	4867
40	4:00		Robert E. Ego	40.0	1.575			79.16		142.16	3.616	4815
40	2:55		Robert E. Ego	40.0	1.575			84.41		147.41	3.685	5363
			Shop Helper									
40	2:00		Robert E. Ego	40.0	1.575			86.99		144.39	3.608	5260
40	4:30		Robert E. Ego	40.0	1.575			86.27		131.67	3.291	4675
40	4:00		Robert E. Ego	40.0	1.575			86.09		139.09	3.487	4871
40	4:00		Robert E. Ego	40.0	1.575			86.00		131.00	3.275	4600

DATA TIME

In-house Classification:

Peak Bidding 5/30/70

A. No.	Class	Job Class.	Att. Hrs.	Rate	Shift	Prev. Pay	Total Pay	Avg Hour Rate	Total Min. Pay	Pay Min.
10	1000	Spot Welder	11.0	5.75	12	67.25	167.55	6.138	2000	6
		Robert Clark								
		Assembler								
20	0120	Laurence H. Lee	33.0	1.525	51.5	55.07	60.52	2.674	2061	1205
30	0117	William Deanna	32.0	1.525	51.5	54.53	145.58	3.639	5693	60
40	1705	Donald Lee	35.7	1.525	54.0	54.46	53.42	2.114	252	2
50	2161	James Gray	45.5	1.525	69.5	73.31	102.96	3.121	5017	1218

BEST COPY

from the original

LINAIRE, Inc.

Incentive Classification

Week Ending 5/30/65

Dept.	Clock	Job Class.	Act. Hrs.	Base Hour Rate	Shift Prem. Rate	Base Pay	Prem. Pay	Total Pay	Avg. Hour Rate	Total Min. Earned	Day Work Min.
		<u>Assembler</u>									
20	2550	Martin Ebel	44.0	1.525		67.10	72.77	139.87	3.178	5012	985
20	2719	Jack Fitch	16.0	1.525		24.40	14.41	38.81	2.425	1376	104
2	4550	Louis Keyes	40.0	1.525		61.00	35.90	96.90	2.422	3108	1413
20	6113	Michael Miglets	41.8	1.525		63.75	69.50	133.25	3.187	5006	503
20	6323	Harry Moore	44.0	1.525		67.10	72.99	140.09	3.297	5455	534
20	6953	Russell Pasenau	45.8	1.525		70.75	67.87	138.62	3.026	5039	340
20	9084	Frank Walker	42.0	1.525		64.05	44.73	108.78	2.590	3456	1654
20	9170	Earl Webb	45.0	1.525		68.63	89.52	158.15	3.514	5917	624
20	9173	Ernest L. Webb	45.8	1.525		69.85	106.91	176.76	3.859	6709	330
50	1023	Charles Cristol	40.0	1.525		61.00	72.10	133.10	3.327	4997	501
50	1222	Willard Coorsey	40.0	1.525		61.00	72.10	133.10	3.327	4997	501
50	2077	James Crost	10.0	1.525		61.00	66.19	127.19	3.179	4525	960
50	2139	Hubert Crum	40.0	1.525		61.00	64.26	125.26	3.131	4432	995
50	4476	Leonard Jones	40.0	1.525		61.00	72.10	133.10	3.327	4997	501
50	5065	Bill Kopis	40.0	1.525		61.00	72.10	133.10	3.327	4997	501
50	5654	Barnett C. Lamons	40.0	1.525		61.00	90.24	151.24	3.781	5950	-0-
50	5685	Dewey G. Leons	40.0	1.525		61.00	72.10	133.10	3.327	4997	501
50	6593	James Love Neal	40.0	1.525		61.00	64.26	125.26	3.131	4432	995
50	7283	Thomas Pope	40.0	1.525		61.00	64.26	125.26	3.131	4432	995
50	7801	Forrest Slaas	46.0	1.525		70.15	62.12	132.27	2.875	5177	53
50	7933	Harold Smith, Jr.	32.0	1.525		48.80	60.11	108.91	3.403	4045	480
50	8482	Robert L. Taylor	40.0	1.525		61.00	72.10	133.10	3.327	4997	501
50	9270	Linden Welch	40.0	1.525		61.00	72.10	133.10	3.327	4997	501
50	9332	William Wentland	40.0	1.525		61.00	64.26	125.26	3.131	4432	995
50	9943	John Zeller	40.0	1.525		61.00	64.26	125.26	3.131	4432	995
70	162	Donald Alexander	50.0	1.525		76.25	109.30	185.55	3.711	7236	156
70	477	Hick Bennett	50.0	1.525		76.25	109.30	185.55	3.711	7236	156
70	486	Ray Bentley	50.0	1.525		76.25	109.30	185.55	3.711	7236	156
70	703	Robert Black	50.0	1.525		76.25	109.30	185.55	3.711	7236	156
70	961	Mc Dow Brady	50.0	1.525		76.25	41.86	118.11	2.362	4022	1253
70	1333	Carlos Cagle	50.0	1.525		76.25	81.50	157.75	3.155	5934	535
70	1364	Forrest Caldwell	50.0	1.525		76.25	109.30	185.55	3.711	7236	156

AVAILABLE

bound volume

LUXAPPE, LA.
Incentive Classification
Week Ending 5/30/65

Dept.	Clock #	Job Class.	Act. Hrs.	Base Hour Rate	Shift Prem. Rate	Base Pay	Prev Pay	Total Pay	Avg. Hour Rate	Total Min Earned	Day Work-Hrs
<u>Assembler</u>											
70	1860	Earl Cooksey	50.0	1.525		76.25	109.70	185.95	3.711	7236	156
70	2409	Cornell Dotson	50.0	1.525		76.25	109.30	185.55	3.711	7236	156
70	2529	Malvin Dunn	48.7	1.525		71.22	39.64	110.86	2.373	3778	1170
70	3249	Alvis Guess	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	3649	Kay Hayes	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	3680	Raymond Haynes	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	3866	Lee Henrikson	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	4390	Jimmy L. Johnson	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	4910	John Kisel	48.0	1.525		73.20	40.06	113.26	2.360	6031	177
70	5034	Robert Kohler	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	5344	Willis Krugman	48.0	1.525		73.20	40.06	113.26	2.360	6031	177
70	5573	Donald Lasure	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	6533	Robert McLaughlin	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	6652	Jos. Newbrough	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	6683	Lawrence Newbrough	49.0	1.525		74.72	105.15	180.87	3.685	7040	150
70	7133	James J. Perry	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	7493	Charles Rose	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	7646	Charles Scrivens	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	7832	Nelson Stone	48.0	1.525		73.20	40.06	113.26	2.360	6031	177
70	8359	Malvin Stephens	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	9239	Joseph Welch	50.0	1.525		76.25	111.36	187.61	3.812	7456	156
70	9374	John Wharton, Jr.	49.5	1.525		75.49	71.51	147.00	2.970	5645	271
70	9853	K. A. Yearkevitch	47.0	1.525		61.00	30.30	91.30	2.283	1226	1226
<u>Assembler</u>											
70	4724	William Ketchum	50.0	1.525	.06	79.25	116.24	195.49	3.910	7362	74
70	6735	William McBride	40.0	1.525	.06	63.40	94.43	157.83	3.946	5945	57
70	7584	Frank Sato	50.0	1.525	.06	79.25	116.24	195.49	3.910	7362	74
70	7723	Odis Skidmore	50.0	1.525	.06	79.25	116.24	195.49	3.910	7362	74

LUXAIRE, INC.

Incentive Classification

Week Ending 5/30/65

Dept.	Clock	Job Class.	Act. hrs.	Base Hour Rate	Shift Prem. Rate	Base Pay	Prem. Pay	Total Pay	Avg. Hour Rate	Total Min. Earned	Day Work Min.
30	5747	Painter-Spray	40.0	1.575		63.00	27.27	90.27	2.257	3407	00
40	424	Raymond Lecher	40.0	1.575		63.00	92.73	155.73	3.893	5932	00
40	1426	Steve Bastik	40.0	1.575		63.00	92.73	155.73	3.893	5932	00
		Joseph Capp									
40	3145	Painter-Spray	40.0	1.575	.06	65.40	101.57	169.77	4.244	6250	00
40	4191	Lloyd Green	40.0	1.575	.06	65.40	104.57	169.77	4.244	6250	00
		Hiram Hulton									
40	6833	Packer	41.0	1.525		62.53	41.91	104.44	2.547	3867	484
40	7987	Ted Parkinson	29.3	1.525		44.68	37.54	82.22	2.806	3234	00
		George Switzer									
90	899	Trucker	42.0	1.525		64.05	65.73	129.78	3.090	4708	197
90	2755	Raymond Brady	39.7	1.525		60.54	96.94	157.48	3.967	5799	199
90	5970	Ronald Fly	41.8	1.525		63.75	59.22	122.97	2.942	4485	108
90	8665	Daniel Mahl	41.9	1.525		63.30	70.40	134.30	3.205	4868	933
90	9549	Donald Lee Thurman	44.2	1.525		66.41	48.05	114.46	2.590	4212	562
		Harry Wirth									
90	672	Trucker	40.00	1.525	.06	63.40	69.17	132.57	3.314	4517	1005
90	5623	Wesley Blaylock	40.0	1.525	.06	63.40	69.17	132.57	3.314	4517	1005
		Dudley Lay									
90	5189	Checker	41.8	1.575		65.84	61.22	127.06	3.040	4485	708
90	8486	John Kozal	18.0	1.575		28.35	28.51	56.86	3.159	2019	293
90	9388	Robert W. Taylor	41.9	1.575		65.99	72.77	138.76	3.312	4868	833
		Frank M. Whalen									
90	7367	Checker	40.0	1.575	.06	65.40	71.43	136.83	3.421	4517	1005
		Woodford Reed									
40	6503	Tow Motor Operator	40.0	1.575		63.00	62.53	125.53	3.138	4782	00
40	8111	Lovell McKinney	44.5	1.575		70.30	96.09	156.39	3.510	5450	00
60	4236	Ernest Sparks	40.0	1.575		63.00	57.74	120.74	3.024	4607	00
		Nick Ignatz									

LUYAJRE, I.
Incentive Classification
Week Ending 5/30/65

Dept.	Acct.	Job. Class.	Act. Hrs.	Base Hour Rate	Shift Prem. Rate	Base Pay	Prem. Pay	Total Pay	Avg. Hour. Rate	Total Min. Earned	Day Work Min.
40	796	<u>Loader</u>	40.0	1.525		61.00	89.79	150.79	3.770	5932	-0-
40	2106	Robert Bonhill	41.0	1.525		62.53	72.55	135.08	3.295	5185	233
40	4610	William Danz	40.0	1.525		61.00	89.79	150.79	3.770	5932	-0-
40	6716	Charles Jones	40.0	1.525		61.00	89.79	150.79	3.770	5932	-0-
40	6716	Floyd Ierons	40.0	1.525		61.00	89.79	150.79	3.770	5932	-0-
40	6743	Dave Hincey	41.0	1.525		62.53	72.55	135.08	3.295	5185	239
40	7036	Lawrence Smith	41.0	1.525		62.53	72.55	135.08	3.295	5185	239
40	9010	Paul Gaylor	40.0	1.525		61.00	89.79	150.79	3.770	5932	-0-
40	9010	<u>Loader</u>	40.0	1.525	.06	63.40	100.64	164.06	4.102	6210	-0-
40	9010	Edward Litansky	40.0	1.525	.06	63.40	101.19	164.59	4.115	6230	-0-
40	9010	Clayde Hicks	40.0	1.525	.06	63.40	101.19	164.59	4.115	6230	-0-
40	9010	James Hengst	40.0	1.525	.06	63.40	101.19	164.59	4.115	6230	-0-

LUXAIRE, NC.
Non-Incentive Classification
Week Ending 5/30/65

Dept	Clock #	Job Class	Act. Hrs.	Base Hour Rate	Shift From Rate	Base Pay	Total Pay	Avg. Hour Rate	Total Min. Earned	Day Work Min.
		<u>Millerwright "A"</u>								
10	2669	George Faigle	40	2.82		112.80	112.80	2.82	2400	2400
10	8040	Herbert Somerville	40	2.71		108.40	109.40	2.71	2400	2400
10	8452	Bert S. Szabo	40	2.82		112.80	112.80	2.82	2400	2400
		<u>Millerwright "B"</u>								
10	2259	Robert Dewey	40.3	2.61		106.75	109.75	2.61	2454	2454
10	4709	Melvin Kerr	58.6	2.61		147.73	147.73	2.61	3396	3396
		<u>Millerwright "C"</u>								
10	8146	Jack Ward	16.0	2.40		38.40	38.40	2.40	960	960
		<u>Automotive Mechanic</u>								
10		Robert Rigby	41.0	2.82		115.62	115.62	2.82	2460	2460
		<u>Electrician "A"</u>								
10	2015	Milton Corlett	40	2.92		116.80	116.80	2.92	2400	2400
10	4286	Tony Jacobs	40	2.92	.12	121.60	121.60	3.04	2400	2400
		<u>Tool and Die Maker "B"</u>								
10	579	Raymond Bickel	40	2.97		118.80	118.80	2.97	2400	2400
		<u>Tool and Die Maker "C"</u>								
10	061	William Abahazi	40	2.87		114.80	114.80	2.87	2400	2400
10	9673	Roy Bray	40	2.87		114.80	114.80	2.87	2400	2400

LUXAIRE, VC.
Non-Incentive Classification
Week Ending 5/30/65

Dept.	Clock #	Job Class	Act. Hrs.	Base Hour Rate	Shift Prem. Rate	Base Pay	Total Pay	Avg. Hour Rate	Total Min. Earned	Day Work Min.
		<u>Sweeper</u>								
10	4265	Theodore Jackson	40	2.19		87.60	87.60	2.19	2400	2400
10	7491	Johnnie Roberts	40	2.08		83.20	83.20	2.08	2400	2400
		<u>Die Setter</u>								
40	7193	Gilman Phillips	43.9	3.09		135.65	135.65	3.09	2634	2634
1) 40	7966	Warren Smith	43.8	2.99		130.96	130.96	2.99	2628	2628
60	1395	Wayne Capelli	40.0	3.09		123.60	123.60	3.09	2400	2400
60	6583	James Neal	32.0	3.09		98.88	98.88	3.09	1920	1920
2) 40	7986	Waymon Robbins	50.0	3.09	.12	160.50	160.50	3.21	3000	3000
40	8400	Okey Stout	40.0	2.94	.12	122.40	122.40	3.06	2400	2400
3) 40	6922	William Lowder	40.0	2.94	.18	124.80	124.80	3.12	2400	2400
		<u>Parts Clerk</u>								
15	1612	John Clouser	39.3	2.55		100.22	100.22	2.55	2368	2368
70	4520	Charles Kapalia	50.0	2.55		127.50	127.50	2.55	3000	3000
		<u>Truck Driver-Semi</u>								
90	3159	William Green	13.5	2.55		344.25	344.25	2.55	810	810
90	7343	William Randolph	24.6	2.55		627.30	627.30	2.55	1476	1476
90	8143	Harry Spurling	25.1	2.55		640.05	640.05	2.55	1506	1506
		<u>Material Handler</u>								

LUXAIRE, 'C.
Non-Incentive Classification
Week Ending 5/30/85

Dept.	Clock #	Job Class	Act. Hrs.	Base Hour Prem. Rate	Base Pay	Total Pay	Avg. Hour Rate	Total Min. Earned	Day Work Min.
60	882	Group Leader Nathan Brainard	40	3.09	123.00	123.00	3.09	2400	2400
		Tractor Operator							
14	5937	Stanley Lucsko	40.8	2.40	97.92	97.92	2.40	2448	2448
14	6476	James Taylor	41.4	2.40	99.36	99.36	2.40	2484	2484
20	1790	Robert Collins	40.0	2.40	96.00	96.00	2.40	2400	2400
50	5358	Richard Logan	32.0	2.40	76.80	76.80	2.40	1920	1920
90	2757	James Fly	31.7	2.40	76.08	76.08	2.40	1902	1902
90	3016	David L. Gibson	36.0	2.40	86.40	86.40	2.40	2160	2160
90	4308	Noland L. James	40.0	2.29	91.60	91.60	2.29	2160	2160
90	5046	Woodrow Lilly	40.0	2.40	96.00	96.00	2.40	2400	2400
90	7186	Theo Phillips	40.0	2.40	96.00	96.00	2.40	2400	2400
90	7336	Gary Radcliff	31.9	2.40	76.56	76.56	2.40	1914	1914
90	7767	James Slavin	29.7	2.29	68.01	68.01	2.29	1782	1782
		Inspector							
50	1510	William Carson	40.0	2.50	100.00	100.00	2.50	2400	2400
		Crane Operator							
60	1457	Michael Capp	40.0	2.50	100.00	100.00	2.50	2400	2400
		Utility-Man							
10	8867	Larry True	40.0	2.45	98.00	98.00	2.45	2400	2400
10	9590	William Woodford	32.0	2.45	78.40	78.40	2.45	1920	1920
16	4206	Frank Ignash	32.0	2.45	78.40	78.40	2.45	1920	1920
50	5933	Stanley Lucsko	40.0	2.45	98.00	98.00	2.45	2400	2400

LUXAIRE INC.
Non-Incentive Classification
Week Ending 5/30/65

Dept.	Clock #	Job Class	Act. Hrs.	Base Hour Rate	Shift Prem. Rate	Base Pay	Total Pay	Avg. Hour Rate	Total Min. Earned	Day Work Min.
<u>Checker Ret. Goods</u>										
15	1775	Raymond Collins	40.0	2.75		110.00	110.00	2.75	2400	2400
<u>Checker Ret. Goods Helper</u>										
15	2379	John Donovan	40.0	2.40		96.00	90.00	2.40	2400	2400
15	5437	David Lahiff	38.0	2.29		87.02	87.02	2.29	2380	2380
<u>Utility-Man Production</u>										
30	5375	Frank J. Kudin	40.0	2.55		102.00	102.00	2.55	2400	2400
40	3711	Allison M. Hoath	40.0	2.55		102.00	102.00	2.55	2400	2400
40	9682	Marshall Wyatt	40.0	2.55	.12	106.80	106.80	2.67	2400	2400
50	8632	Lawrence B. Thudium	40.0	2.55		102.00	102.00	2.55	2400	2400
70	1019	Alfred Bruce	50.0	2.55		127.50	127.50	2.55	3000	3000
70	2108	John Crowder	50	2.55		127.50	127.50	2.55	3000	3000
<u>Checker Repair Return Goods Cooling</u>										
70	9022	Alvan L. Vampeny	49.9	3.00		149.70	149.70	3.00	2994	2994
<u>Checker Non-Incentive</u>										
14	1484	Francis R. Carr	40.8	2.76		112.61	112.61	2.76	2448	2448
14	2919	Coy L. Garrett	41.5	2.76		114.54	114.54	2.76	2480	2480

LUXAIR, INC.

Incentive Classification

Week Ending 6/6/55

pt.	Clock #	Job Class.	Act. Hrs.	Base		Shift Prem. Rate	Base Pay	Prem. Pay	Total Pay	Avg. Hour. Rate	Total Min. Earned	Day Work Min.
				Hour. Rate								
Arc Welder "A"												
30	101	William C. Axford, Jr.	32.2	1.575			50.71	75.27	125.98	3.909	4799	18
	393	William Balzer	32.3	1.575			50.87	54.38	105.25	3.259	3987	63
30	1581	Joseph Cibrak	32.3	1.575			50.87	74.94	125.81	3.895	4793	18
30	2649	Walter Fabian	32.3	1.575			50.87	75.58	126.45	3.915	4817	18
30	3009	Marion L. Gibbs	32.3	1.575			50.87	71.89	122.76	3.801	4604	161
30	4507	Robert E. Kannenberg	VACATION									
30	6443	Edward L. McGucken	32.3	1.575			50.87	74.54	125.41	3.883	4777	18
30	6923	Frank L. Pasadya	32.3	1.575			50.87	71.54	125.43	3.883	4777	18
30	7315	Leland Scheid	44.2	1.575			6.62	7.53	14.15	3.369	539	-0-
30	8482	Robert P. Toth	32.3	1.575			50.87	62.92	113.79	3.523	4094	498
30	2915	Peter Zelaski	32.3	1.575			50.87	64.58	115.45	3.574	4398	18
40	661	Roy Blackwell	32.3	1.575			50.87	70.07	120.94	3.744	4524	183
Repair Welder Cleaner												
30	4693	James Karns	32.3	1.575		.06	52.81	73.33	126.14	3.905	4577	122
30	9703	Harry W. Yearley	32.3	1.575		.06	52.81	81.07	133.88	4.145	4865	113
30	9825	Robert Youngberg	32.3	1.575		.06	52.81	91.07	133.88	4.145	4865	113
Machine Operator "A"												
30	4266	Frank W. Jacobs	32.3	1.575			50.87	15.45	66.32	2.053	2382	306
50	5406	George W. Kurth	32.0	1.575			50.39	32.74	83.13	2.598	3167	18
Machine Operator "A"												
30	2469	Charles Driggs	32.3	1.575			50.87	46.37	97.24	3.011	3623	179
40	181	Robert K. Amick	32.3	1.575			50.87	65.66	116.53	3.601	4373	283
40	1302	Alfred A. Cagle	32.3	1.575			50.87	78.17	129.04	3.995	4915	18
40	1533	George T. Carthern	32.3	1.575			50.87	50.17	101.04	3.128	3849	325
40	2676	Joe Mike Farkeas	24.3	1.575			38.27	19.07	57.34	2.360	2076	350
40	4370	Robert F. Jewett	32.3	1.575			50.87	78.17	129.04	3.995	4915	18
40	6623	Richard P. Menzowski	32.3	1.575			50.87	55.75	106.62	3.301	3955	414
40	6803	John O'Brien	24.3	1.575			38.27	40.63	78.90	3.247	3005	141
60	868	Michael J. Bosko	32.3	1.575			50.87	76.95	127.82	3.957	4867	18
60	1178	James L. Burgess	32.3	1.575			50.87	75.95	126.82	3.926	4830	18
60	1194	H.C. Grabenstetter	32.3	1.575			50.87	50.52	101.39	3.159	3801	141
60	1370	Wade Haggard	32.3	1.575			50.87	65.47	116.54	3.602	4380	121

WAXMILL, INC.

Incentive Classification

Week Ending 6/6/65

Dept.	Clock #	Job Class.	Act. Hrs.	Base Hour. Rate	Shift Prem. Rate	Base Pay	Prem. Pay	Total Pay	Avg. Hour. Rate	Total Min. Earned	Day Work Min.
		<u>Machine Operator "A"</u>									
60	5778	Marvin Liles	32.3	1.575		50.87	65.63	116.50	3.607	4383	127
	6293	Ted C. Monday	32.3	1.575		50.87	75.95	126.82	3.926	4830	18
60	7073	Willie E. Payne	32.3	1.575		50.87	76.95	127.82	3.957	4867	18
60	7403	Ronald C. Riese	30.4	1.575		47.88	69.08	116.96	3.847	4454	18
	7677	Harold Seeling	32.3	1.575		50.87	39.20	90.07	2.789	3158	564
60	7940	Richard H. Smith	32.3	1.575		50.87	60.77	111.64	3.456	4177	169
60	8542	Paul J.M. Thompson	32.3	1.575		50.87	70.74	121.61	3.765	4573	172
60	8962	Robert Varnedell	32.3	1.575		50.87	77.47	128.34	3.973	4532	525
60	4326	Frank Jeffers	32.3	1.575		50.87	11.28	76.15	2.363	2938	1938
		(Injured - unable to perform regular work)									
40	151	Floyd Allen	31.9	1.575	.06	52.16	55.57	107.73	3.377	3901	122
40	1054	Michael Brkich	32.3	1.575	.06	52.81	76.11	128.92	3.991	4730	18
40	2679	Juan A. Feliciano	32.3	1.575	.06	52.81	76.17	128.98	3.993	4732	18
40	6053	Edward Meosky	32.3	1.575	.06	52.81	70.70	123.51	3.824	4532	18
40	7336	Clarence Queen	30.6	1.575	.06	50.03	35.07	85.10	2.781	2998	266
		<u>Machine Operator "A"</u>									
	1813	Lowell Compton	32.3	1.575	.12	54.75	73.17	127.92	3.960	4528	18
		<u>Machine Operator "B"</u>									
40	4402	Larry J. Johnston	32.3	1.475		47.64	18.92	66.56	2.051	2441	665
40	7240	Paul Dean Perry	32.3	1.475		47.64	16.53	64.17	1.987	2611	114
40	8352	Alan Thompson	32.3	1.525		49.26	37.69	86.95	2.692	3389	223
40	9380	Duane E. Whalen	32.3	1.475		47.64	18.55	66.19	2.049	2566	643
40	450	Richard Beaver	32.3	1.525		49.26	49.43	98.69	3.055	3527	532
60	7406	Willard H. Rice	32.3	1.525		49.26	43.52	92.78	2.872	3442	434
		<u>Machine Operator "B"</u>									
40	1274	Donald R. Buchanan	32.3	1.475	.06	49.58	30.87	80.45	2.491	2998	311
40	5920	Faris Lee Lowder, Jr.	32.3	1.525	.06	51.20	35.83	87.03	2.694	3236	135
40	4664	Lewis McManey	32.3	1.525	.06	51.20	25.71	76.91	2.381	2718	404
40	8620	James Threest	32.3	1.525	.06	51.20	55.02	106.22	3.289	3946	167
60	6280	Harold McKinney	29.7	1.525	.06	30.52	31.05	769.58	2.863	2578	168

Incentive Classification

Week Ending 6/6/65

Dept.	Clock #	Job Class.	Act. Hrs.	Base Rate	Shift Prem. Rate	Pres. Pay	Total Pay	Avg. Hour. Rate	Total Min. Earned	Day Work Min.
Machine Operator "A"										
40	1425	Joseph R. Gapp	29.3	1.515	.12	48.21	70.14	2.394	2358	16
40	2815	Roger Frymoyer	24.3	1.515	.12	36.90	42.72	1.758	1607	16
40	3016	Louise W. Boudreau	32.3	1.515	.12	59.14	81.84	2.534	2985	16
40	5632	Robert Leichter	25.7	1.475	.12	40.99	53.49	2.081	2013	16
Spot Welder										
40	2511	James Driver	20.1	1.575		31.66	66.19	3.293	2506	30
40	3359	William R. Guthrie	32.3	1.575		50.87	117.63	3.642	4459	61
40	4380	Albert Johnson, Jr.	32.3	1.575		50.87	116.41	3.604	4435	18
40	6097	Walter Michalski	32.3	1.575		50.87	106.92	3.310	3973	243
40	7253	Lester Platt	32.3	1.575		50.87	125.64	3.890	4786	18
			32.3	1.575		50.87	109.36	3.386	4075	200
Spot Welder										
40	2769	Emory Franklin	32.3	1.575	.06	52.81	114.41	3.542	4199	18
40	8391	Richard Stevens	32.3	1.575	.06	55.81	89.30	2.765	3258	35
40	8562	Alta Thurnum	32.3	1.575	.06	52.81	129.73	4.016	4715	109
40	9510	Devard Winingham	32.3	1.575	.06	52.81	115.47	3.575	4222	48
Spot Welder										
40	1660	Robert L. Clutter	32.3	1.575	.12	54.75	139.02	3.994	4484	183
Painting										
20	0390	Lawrence Balser	24.3	1.525		37.06	73.62	3.030	2602	610
20	0517	William M. Benton	32.3	1.525		49.26	115.24	3.568	4534	18
20	1782	Donald Cole	33.4	1.525		50.94	63.75	1.909	2506	18
20	2550	Arthur Ebel	30.5	1.525		46.52	96.92	3.178	3709	225
20	2739	Jack A. Pritch	32.3	1.525		49.26	68.52	2.121	2433	548

260

AVAILABLE

al bound volume

INCENTIVE, INC.
Incentive Classification
Week Ending 6/6/65

Clock #	Job Class	Act. Hrs.	Base Hour Rate		Shift Prem. Rate	Base Pay		Prom. Pay	Total Pay		Avg. Hour Rate	Total Min. Earned	Day Work Min.	
			Rate	Rate		Pay	Pay		Pay					
Assembler														
20	4550	Louis Kenyon	32.3	1.525		49.26		45.52	94.78	2.934	3090	1300		
20	6113	Michael J. Higlata	32.3	1.525		49.26		62.26	111.52	3.433	4340	111		
20	6323	Harry W. Moore	32.3	1.525		49.26		60.22	109.48	3.389	4241	131		
20	6953	Russell Peterson	32.3	1.525		49.26		58.55	107.81	3.338	3991	359		
20	9084	Frank L. Walker	32.3	1.525		49.26		33.45	82.71	2.561	2806	917		
20	9170	Earl Webb	32.3	1.525		49.26		75.01	124.27	3.862	4832	134		
20	9173	Ernest L. Webb	33.4	1.525		50.94		76.42	127.36	3.813	5009	18		
50	1073	Charles S. Bristol	32.3	1.525		49.26		66.31	116.17	3.597	4570	18		
50	1922	Willard E. Cooksey	32.3	1.525		49.26		73.52	122.78	3.801	4795	88		
50	2077	James L. Crost	32.3	1.525		49.26		75.68	124.94	3.868	4915	18		
50	2139	Hubert Crum	32.3	1.525		49.26		66.91	116.17	3.597	4570	18		
50	4476	Leonard F. Jensen	29.6	1.525		45.14		81.35	106.49	3.598	4109	18		
50	5065	Bill Kopio	32.3	1.525		49.26		72.62	121.90	3.773	4795	18		
50	5654	Barrett G. Lomax	32.3	1.525		49.26		66.91	116.17	3.597	4570	18		
50	5685	Dorsey G. Lomax	32.3	1.525		49.26		75.68	124.94	3.868	4915	18		
50	6593	James Love Neal	31.3	1.525		49.26		69.34	110.34	2.759	4326	50		
50	7283	Thomas J. Pope	40.0	1.525		46.82		69.45	116.27	3.787	4539	88		
50	7801	Forrest E. Sless, Jr.	30.7	1.525		49.26		66.91	116.17	3.597	4570	18		
50	7933	Harold A. Smith	32.3	1.525		49.26		66.91	116.17	3.597	4570	18		
50	9482	Robert L. Taylor	32.3	1.525		49.26		75.68	124.94	3.868	4915	18		
50	9270	Linden N. Welch	32.3	1.525		49.26		75.68	124.94	3.868	4915	18		
50	9332	William F. Wentland	32.3	1.525		49.26		75.68	124.94	3.868	4915	18		
50	9943	John Zeller	40.0	1.525		61.00		60.52	121.52	3.038	4706	329		
70	0162	Donald Alexander	40.0	1.525		61.00		60.52	121.52	3.038	4706	329		
70	0477	Nick Bennett	40.0	1.525		61.00		60.52	121.52	3.038	4706	329		
70	0486	Ray Bentley	40.0	1.525		61.00		60.52	121.52	3.038	4706	329		
70	0703	Robert W. Block	40.0	1.525		61.00		49.39	110.39	2.760	4328	50		
70	0961	Woodrow Brady	40.0	1.525		61.00		72.35	133.35	3.334	5245	18		
70	1333	Carole Cagle	40.0	1.525		61.00		56.88	117.88	3.036	4380	329		
70	1364	Forrest Caldwell	37.3	1.525		56.88		60.52	117.40	3.158	4706	329		
70	1860	A Earl Cooksey	40.0	1.525		61.00		60.52	121.52	3.038	4706	329		

INZ. 3-11-65
Incentive Classification
Week Ending 6/6/65

Dept.	Clock	Job Class.	Act. Hrs.	Base Hour. Rate	Shift Prem. Rate	Base Pay	Prem. Pay	Total Pay	Avg. Hour. Rate	Total Earned	Day Work Min.
Assemblers											
70	2409	Gernell Dotson	40.0	1.525		61.00	60.52	121.52	3.038	4706	329
70	2529	Malvin T. Dunn	38.0	1.525		57.95	47.12	105.07	2.765	4121	45
70	3249	Alvin Guess	40.0	1.525		61.00	93.01	154.01	3.850	6037	18
70	3649	Kay W. Mayes	40.0	1.525		61.00	60.52	121.52	3.038	4706	329
70	3490	Raymond Haynes	39.6	1.525		60.40	68.58	128.98	3.257	5044	356
70	3866	Lee Harrison	--	--		--	--	--	--	--	--
70	4390	Jimmy L. Johnson	40.0	1.525		61.00	60.52	121.52	3.038	4706	329
70	4910	John Kugel	38.6	1.525		60.39	48.75	109.14	2.756	4270	50
70	5034	Robert G. Kohler	40.0	1.525		61.00	60.52	121.52	3.038	4706	329
70	5334	William H. Krugman	39.6	1.525		60.39	84.10	144.49	3.649	5541	307
70	5573	Donald Leure	40.0	1.525		61.00	69.34	130.34	2.786	4326	50
70	6513	Robert McLaughlin	40.0	1.525		61.00	60.52	121.52	3.038	4706	329
70	6653	Joseph W. Newbrough	39.0	1.525		59.48	59.10	118.58	3.041	4590	329
70	6863	Lavonne Newbrough	40.0	1.525		61.00	60.52	121.52	3.038	4706	329
70	7133	James J. Perry	40.0	1.525		61.00	60.52	121.52	3.038	4706	329
70	7493	Charles Ross	40.0	1.525		61.00	64.99	125.99	3.150	5400	307
70	7932	Wilson Stone	40.0	1.525		61.00	60.52	121.52	3.038	4706	329
70	8359	Malvin Stephens	40.0	1.525		61.00	60.52	121.52	3.038	4706	329
70	9239	Joseph Welch	30.6	1.525		60.39	60.19	120.58	3.045	4672	323
70	9394	John W. Wharton, Jr.	40.0	1.525		61.00	81.28	142.28	3.557	5372	59
70	9853	H. A. Yonkavitch	40.0	1.525		61.00	69.34	130.34	2.759	4326	50
Painters											
70	4724	William Ketchum	40.0	1.525	.06	63.40	100.93	164.33	4.108	6220	23
70	6435	William Morfide	30.0	1.525	.06	47.53	74.59	122.11	4.071	4623	23
70	7504	Frank Kato	40.0	1.525	.06	63.40	100.93	164.33	4.108	6220	23
70	7730	Odle Skidmore	40.0	1.525	.06	63.40	100.94	164.33	4.108	6220	23
Paint - Extra											
30	5747	Raymond Lecher	38.3	1.575		50.07	19.95	70.02	2.193	2497	18
70	0624	Steve Pantik	38.3	1.575		50.07	67.89	118.76	3.077	4427	211
70	1426	Joseph Capp	38.3	1.575		50.07	67.89	118.76	3.077	4427	211

100-2, DMC

Incentive Classification

Week Ending 6/6/65

Days	Clock #	Job Class	Act. Hrs.	Base Hour Rate	Shift Prem. Rate	Base Pay	Prem. Pay	Total Pay	Avg. Hour Rate	Total Min. Earned	Day Work Min.
		Paint - Spray									
40	3143	Lloyd L. Green	32.3	1.375	.06	52.81	63.68	116.49	3.607	3976	614
40	4191	Hiram P. Hyton	32.3	1.375	.06	52.81	55.91	108.72	3.366	3577	841
		Packer									
40	6833	Ted A. Parkinson	32.3	1.525		49.26	52.92	102.18	3.163	3725	609
40	7369	Charles Reuvs	32.3	1.525		49.26	52.92	102.18	3.163	3725	609
40	7987	George G. Saltzer	32.3	1.525		49.26	55.61	104.87	3.247	3883	504
		Trucker									
90	0099	Raymond Brady	36.2	1.525		55.21	48.70	103.91	2.870	3842	512
90	1780	Robert Collins	36.7	1.525		55.98	65.08	121.06	3.299	4492	561
90	2755	Ronald Wayne Fly	32.3	1.525		49.26	53.33	102.59	3.176	3392	1244
90	2757	James Fly	32.3	1.525		49.26	75.68	124.94	3.868	4915	18
90	4970	Daniel A. Muhl	33.9	1.525		51.70	47.09	98.79	2.914	3645	503
90	8443	Donald Lee Thurman	34.5	1.525		52.62	62.03	114.67	3.324	4254	534
90	9549	Harry R. Wirth	40.0	1.475		59.00	47.71	106.71	2.668	4326	50
		Trucker									
90	0672	Wesley P. Blaylock	32.3	1.525	.06	51.20	69.35	120.55	3.732	4452	240
90	5623	Dudley Lay	32.3	1.525	.06	51.20	69.35	120.55	3.732	4452	240
		Trucker									
70	9022	Alvan L. Vignery	40.0	1.525		61.00	59.00	120.00	3.000	2400	2400
90	5189	John E. Rosel	39.3	1.545		58.90	44.07	102.97	2.620	3412	1422
90	8486	Robert W. Taylor	33.4	1.575		52.40	44.36	96.76	2.963	3598	679
90	9244	Frank M. Wadsworth	34.7	1.575		57.41	67.26	124.67	3.590	4464	541

272

LUXAIR, INC.

Incentive Classification

Week Ending 6/6/65

Dept.	Clock #	Job Class.	Act Hrs.	Base Hour. Rate	Shift Prem. Rate	Base Pay	Item. Pay	Total Pay	Avg. Hour. Rate	Total Min. Earned	Day Work Min.
1	7167	Checker Woodford D. Reed	32.3	1.575	.06	52.01	71.54	124.55	3.850	4452	240
10	6503	Tow Motor Operator Lovell McKinney	32.3	1.575		50.87	51.24	102.11	3.161	3890	18
10	8111	East Sparks	34.3	1.575		54.03	66.84	114.87	3.349	4376	18
30	4236	Nick Ignate	32.3	1.575		50.87	50.32	112.19	3.473	4274	18
10	0790	Loader Robert Monh11	32.3	1.525		49.26	65.73	114.99	3.560	4427	211
10	2380	William F. Danz	32.3	1.525		49.26	65.73	114.99	3.560	4427	211
10	4416	Charles C. Jones	32.3	1.525		49.26	65.73	114.99	3.560	4427	211
40	5716	Floyd R. Lewons	32.3	1.525		49.26	65.73	114.99	3.560	4427	211
40	6143	Doye R. Mincey	32.3	1.525		49.26	65.73	114.99	3.560	4427	211
40	7936	Lawrence Smith	32.3	1.525		49.26	65.73	114.99	3.560	4427	211
40	8018	Carl Snyder	32.3	1.525		49.26	65.73	114.99	3.560	4427	211
J	3226	Loader Edward Gronsky	32.3	1.525	.06	51.20	65.81	117.01	3.723	4263	351
40	3905	Clyde Hicks	32.3	1.525	.06	51.20	65.81	117.01	3.442	3962	513
10	6817	James Overstreet	32.3	1.525	.06	51.20	65.81	117.01	3.723	4263	351

1938 W. L.C.

Continued by Classification

Week Ending 6/6/65

Dept.	Clock #	Job Class.	Act. Hrs.	Base		Shift Prem. Rate	Base Pay	Total Pay	Avg. Hour. Rate	Total		Day Work Min.
				Hour. Rate	Rate					Min. Earned	Min.	
		<u>Electrician "H"</u>										
10	2669	George Falgile	32.3	2.82			91.08	91.08	2.82	31.09	1938	1938
10	8040	Herbert Sosorvillo	32.3	2.71			87.53	87.53	2.71	87.53	1938	1938
10	8452	Bert S. Szabo	32.3	2.82			91.08	91.08	2.82	91.08	1938	1938
		<u>Millwright "H"</u>										
10	8219	Robert Dawes	32.3	2.61			84.70	84.70	2.61	84.70	1938	1938
10	8452	Walter A. Herr	48.3	2.61			126.05	126.05	2.61	126.05	2898	2898
		<u>Millwright "C"</u>										
10	9146	Jack C. Ward	32.3	2.29			73.97	73.97	2.29	73.97	1938	1938
		<u>Automotive Mechanic</u>										
10	8452	Robert C. Szymon	33.1	2.82			93.35	93.35	2.83	93.35	1980	1980
		<u>Electrician "H"</u>										
10	2015	Milton Corbett	32.3	2.82			91.32	91.32	2.82	91.32	1938	1938
10	4296	Tony Jacobs, Jr.	32.3	2.82	.12		98.19	98.19	3.04	98.19	1938	1938
		<u>Tool & Die Maker "H"</u>										
10	472	Raymond C. Bickel	32.3	2.87			93.83	93.83	2.87	93.83	1938	1938
		<u>Tool & Die Maker "C"</u>										
10	801	William F. Abahasi	32.3	2.87			92.70	92.70	2.87	92.70	1938	1938
10	8073	Roy Bray	32.3	2.87			92.70	92.70	2.87	92.70	1938	1938

274

LYNAIR, INC.

Non-Incentive Classification

Week Ending 6/6/65

Dept.	Clock #	Job Class.	Act. Hrs.	Base Hour. Rate	Shift Prem. Rate	Base Pay	Total Pay	Avg. Hour. Rate	Total Min. Earned	Day Work Min.
		<u>Sweeper</u>								
10	4255	Theodore Jackson	32.3	2.19		70.74	70.74	2.19	1938	1938
10	7491	Johnnie W. Robert	32.3	2.08		67.10	67.10	2.08	1938	1938
		<u>Die Setter</u>								
40	7183	Tilmon W. Phillips	34.7	3.09		107.23	107.23	3.09	2082	2082
60	1395	Wayne M. Capell	32.3	3.09		99.81	99.81	3.09	1938	1938
60	4563	James L. Neal	29.6	3.09		91.47	91.47	3.09	1776	1776
40	7433	Waymon C. Robbings	42.2	3.09	.12	135.46	135.46	3.21	2532	2532
40	7868	Warren Roy Smith	34.7	2.99		103.75	103.75	2.99	2082	2082
40	6660	Oacy Lee Stout	39.3	2.24	.12	120.76	120.76	3.06	2358	2358
40	5922	William K. Lonier	32.3	2.94	.16	100.78	100.78	2.94	1830	1830
		<u>Parts Clerk</u>								
15	1612	John F. Clouser	27.0	2.55		68.85	68.85	2.55	1620	1620
70	4520	Charles Kapalin, Jr.	40.0	2.55		102.00	102.00		2400	2400
		<u>* Truck Driver - Semi</u>								
90	3139	William D. Green	29.4	2.55		74.97	74.97	2.55	1764	1764
90	7343	William C. Randolph	9.3	2.55		23.78	23.72	2.55	656	656
90	8142	Harry Spurling	46.8	2.55		119.36	119.36	2.55	2808	2808
		<u>Material Handler</u>								
70	4523	Melvin Kapalin	40.0	2.19		87.60	87.60	2.19	2400	2400
		<u>Group Leader</u>								
60	892	Maxman J. Brainard	32.3	3.09		99.81	99.81	3.09	1938	1938

* Variance in Pay due to over the road driving

Appendix 24.
 Merit-Incentive Classification
 Decet Ending 6/6/65

<u>Perio.</u>	<u>Clock</u>	<u>Job Class.</u>	<u>Act. Rte.</u>	<u>Base Hour. Rate</u>	<u>Merit Pct.</u>	<u>Base Pay</u>	<u>Total Pay</u>	<u>Avg. Hour. Rate</u>	<u>Total Min. Earned</u>	<u>Day Work Min.</u>
<u>Towmotor Operator</u>										
14	5337	Stanley J. Lucsko	27.0	2.400		64.80	64.80	2.400	1620	1620
14	6476	James Taylor	35.1	2.400		84.72	84.72	2.400	2118	2118
20	2141	James Crum	28.1	2.400		58.32	58.32	2.400	1458	1458
90	0224	Donald Anderson	30.1	2.290		73.97	73.97	2.290	1938	1938
90	0407	Robert L. Supter	32.8	2.290		75.12	75.12	2.290	1968	1968
90	5859	Richard Logan	16.3	2.400		39.12	39.12	2.400	978	978
90	7339	Gary Lee Radcliff	28.3	2.400		58.32	58.32	2.400	1458	1458
90	7767	James Shavin	32.3	2.290		73.97	73.97	2.290	1938	1938
90	4306	Roland Lynn James	32.3	2.290	.12	77.84	77.84	2.310	1938	1938
90	5800	Wor-Arrow Lilly	28.3	2.400	.12	61.24	61.24	2.520	1658	1658
90	7105	Theo Phillips	32.3	2.400	.12	61.40	61.40	2.520	1938	1938
90	3016	David L. Gibson	27.8	2.400		69.40	72.03	2.591	2335	929
* (Employee performed towmotor operator 1 day and incentive class of trucker at 1.525 base rate 2 days)										
<u>Inspector</u>										
50	1519	William K. Carson	32.3	2.500		80.75	80.75	2.500	1938	1938
<u>Crane Operator</u>										
60	1457	Michael A. Capp	32.3	2.500		80.75	80.75	2.500	1938	1938
<u>Utility Man</u>										
10	8867	Larry Truo	32.3	2.290		73.97	73.97	2.290	1938	1938
10	9790	William A. Woodford	32.3	2.450		79.13	79.13	2.450	1938	1938
15	1206	Frank P. Ignasik	24.3	2.450		59.53	59.53	2.450	1458	1458
50	5733	Stanley Lucsko	32.3	2.450		79.12	79.12	2.450	1938	1938
<u>Chester Return Goods</u>										
90	3775	Harold Collins	32.1	2.700		86.15	89.15	2.750	1938	1938

WMA, Inc.
Non-Incentive Classification
Week Ending 6/6/65

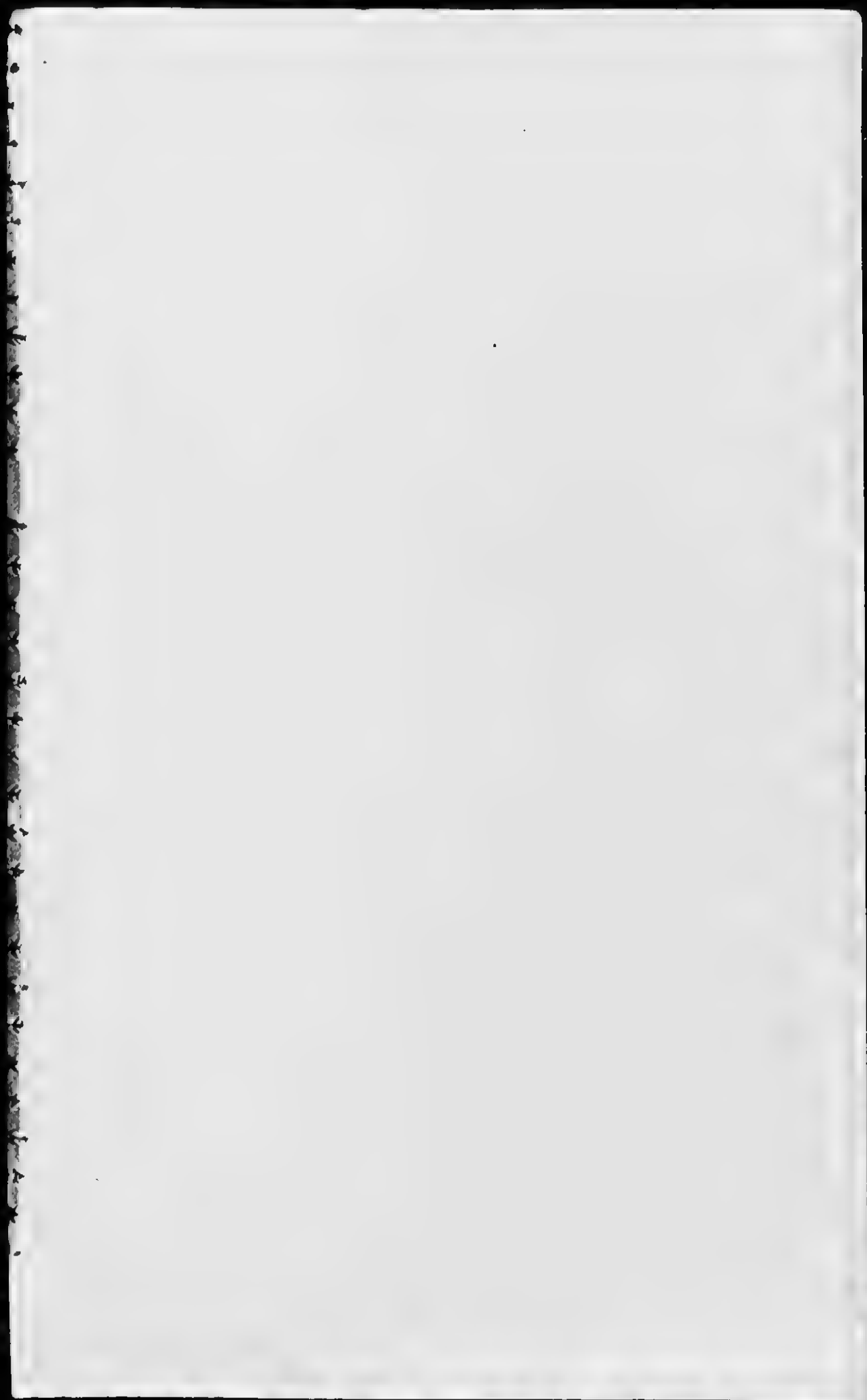
<u>Point</u>	<u>Clock #</u>	<u>Job Class.</u>	<u>Act. Hrs.</u>	<u>Base Hour. Rate</u>	<u>Shift Prem. Rate</u>	<u>Base Pay</u>	<u>Total Pay</u>	<u>Avg. Hour. Rate</u>	<u>Total Min. Earned</u>	<u>Day Work Min.</u>
<u>Towmotor Operator</u>										
14	5937	Stanley J. Lucsko	27.0	2.400		64.80	64.80	2.400	1620	1620
14	1476	Jones Taylor	35.3	2.400		84.72	84.72	2.400	2118	2118
20	2141	Jesse Gray	24.3	2.400		58.32	58.32	2.400	1458	1458
90	0224	Gerald Anderson	32.3	2.290		73.97	73.97	2.290	1938	1938
90	0407	Robert L. Sumpter	32.8	2.290		75.12	75.12	2.290	1968	1968
30	5053	Richard Logan	16.3	2.400		39.12	39.12	2.400	978	978
30	7339	Gary Lee Modeloff	24.3	2.400		58.32	58.32	2.400	1458	1458
90	7767	Jane Glavin	32.3	2.290		73.97	73.97	2.290	1938	1938
90	4491	Volund Lynn James	32.3	2.290	.12	77.84	77.84	2.410	1938	1938
30	5549	Woodrow Lilly	24.3	2.400	.12	61.24	61.24	2.520	1658	1658
90	7186	Thom Phillips	32.3	2.400	.12	81.40	81.40	2.520	1938	1938
30	3016	David L. Gibson	27.6	2.400		66.24	72.03	2.591	2335	929
* (Employee performed towmotor maintenance 1 day and incentive class at truck at 1.52, base rate 2 days)										
<u>Inspector</u>										
50	1439	William K. Carson	32.3	2.500		80.75	80.75	2.500	1938	1938
<u>Crane Operator</u>										
60	1457	Michael A. Capp	32.3	2.500		80.75	80.75	2.500	1938	1938
<u>Welder</u>										
10	8867	Larry True	32.3	2.890		93.47	93.47	2.890	1938	1938
10	9590	William A. Woodford	32.3	2.450		79.13	79.13	2.450	1938	1938
15	1406	Frank F. Lemish	24.3	2.450		59.53	59.53	2.450	1458	1458
50	5933	Stanley Lucsko	32.3	2.450		79.13	79.13	2.450	1938	1938
<u>Operator, Portland Cement</u>										
45	1773	Raymond Collins	32.3	2.760		89.15	89.15	2.760	1938	1938

APPENDIX, Vol. 2.
Non-Incentive Classification
Week Ending 6/6/65

<u>Depth</u>	<u>Clock #</u>	<u>Job Class.</u>	<u>Act. Mro.</u>	<u>Base Hour. Rate</u>	<u>Shift From Rate</u>	<u>Base Pay</u>	<u>Total Pay</u>	<u>Avg. Hour. Rate</u>	<u>Total Min. Earned</u>	<u>Day Work Min.</u>
		<u>Checker Return Goods Helper</u>								
15	2372	John Donovan	31.0	2.400		74.40	74.40	2.400	1660	1860
15	5437	David A. Lahiff	29.3	2.290		67.10	67.10	2.290	1758	1758
		<u>Utility Man - Prod.</u>								
20	5375	Edward J. Kudlo	32.3	2.550		82.37	82.37	2.550	1938	1938
40	3711	Alfred M. Heath	32.3	2.550		82.37	82.37	2.550	1938	1938
40	9082	Harold Wynn	32.3	2.450	.12	83.01	83.01	2.570	1938	1938
50	8032	Edward B. Threlton	32.3	2.550		82.37	82.37	2.550	1938	1938
70	1030	Alfred Brown	40.0	2.550		102.00	102.00	2.550	2400	2400
70	2108	John Crocker	40.0	2.550		102.00	102.00	2.550	2400	2400
		<u>Checker Repair Return Goods - Cooling</u>								
70	9022	Alvin L. Vintery	40.0	3.000		120.00	120.00	3.000	2400	2400
		<u>Checker Non-Incentive</u>								
14	1184	Frederic R. Carr	35.3	2.760		97.43	97.43	2.760	2118	2118
14	2919	Coy L. Garrett	34.1	2.760		94.12	94.12	2.760	2046	2046

BEST COPY AVAILABLE

from the original bound volume



BRIEF FOR UNITED STEELWORKERS OF
AMERICA, AFL-CIO

IN THE
United States Court of Appeals
FOR THE
District of Columbia Circuit

No. 21,043

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
v. *Petitioner,*
NATIONAL LABOR RELATIONS BOARD, *Respondent.*

No. 21,338

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*
v.
LUXAIRE, INC., *Respondent.*

ON PETITION TO REVIEW, AND PETITION TO ENFORCE
A DECISION AND ORDER OF THE NATIONAL
LABOR RELATIONS BOARD

JOSEPH E. FINLEY

MELVIN S. SCHWARZWALD

METZENBAUM, GAINES,

KRUPANSKY, FINLEY & STERN

700 Union Commerce Building
Cleveland, Ohio 44115

MICHAEL H. GOTTESMAN

BREDHOFF & GOTTESMAN

1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

*Attorneys for United Steelworkers
of America, AFL-CIO*

OF COUNSEL:

BERNARD KLEIDMAN

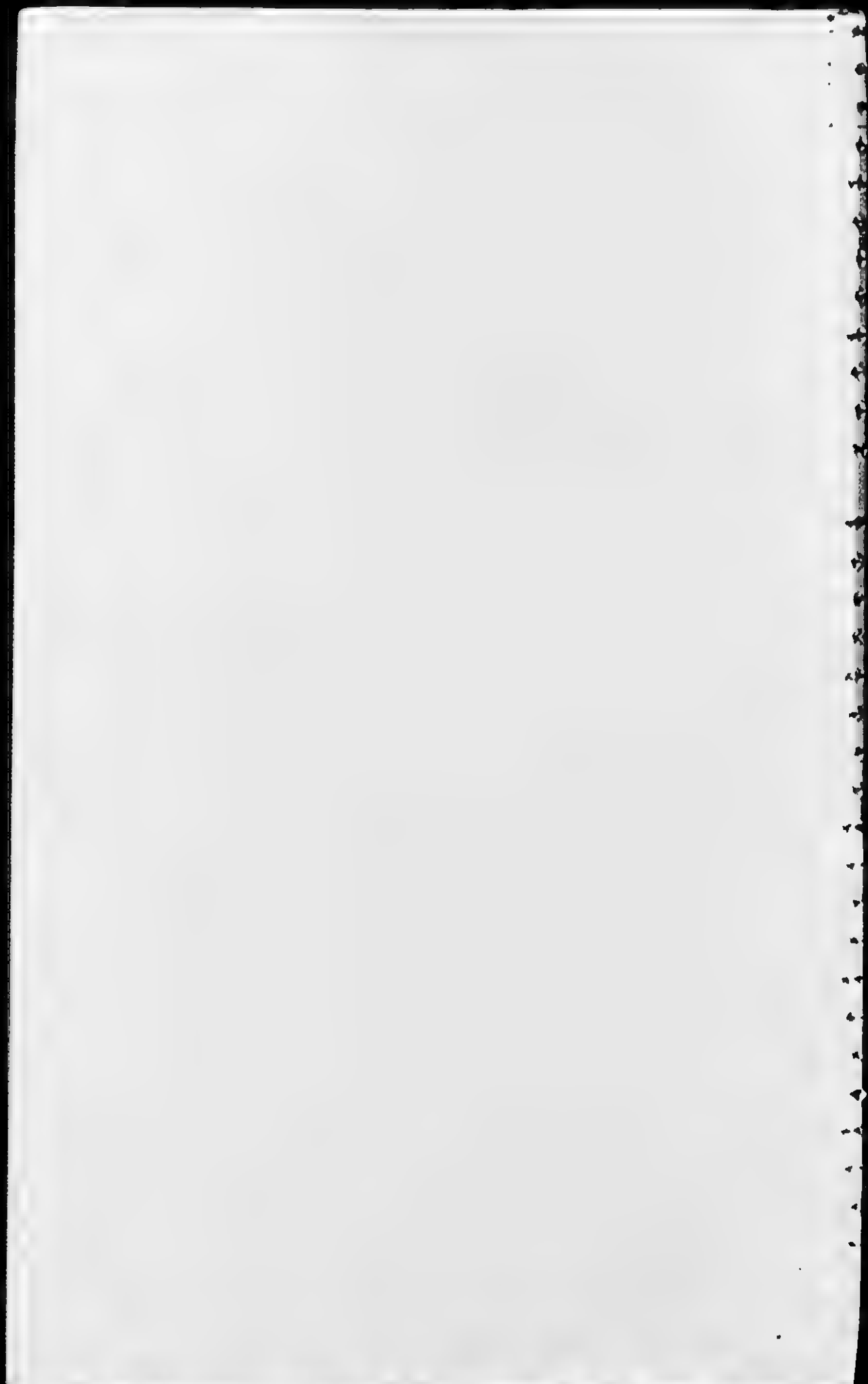
10 South LaSalle Street
Chicago, Illinois

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 20 1967

Nathan J. G. [Signature]
CLERK





STATEMENT OF QUESTIONS PRESENTED

The issues are correctly set forth in the Board's brief.

TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF QUESTIONS PRESENTED	i
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
Facts Relating to the Company's Objection to the Election ...	2
The Refusals to Bargain	6
Alleged Violations of Section 8(a)(1)	7
The General Counsel's Complaint	10
The Union's Motion to Amend the Complaint	11
The Decision and Order	11
STATEMENT OF POINTS	12
SUMMARY OF ARGUMENT	13
ARGUMENT	15
I. The Company Violated Section 8(a)(5) When It Re-	
fused to Recognize and Bargain with the Union Despite	
the Majority Shown by the Strike and on the Picket Line	15
A. An Employer May be Obligated to Recognize and	
Bargain with a Union Even Without a Valid Election	
Victory	16
B. The Request for Bargaining and The Denial of That	
Request	16
C. Support of the Strike and Picket Line Participation as	
Proof of Majority Status	17
D. The Company's Contemporaneous Commission of Un-	
fair Labor Practices Designed to Destroy the Union's	
Support is Additional Evidence of Its Bad Faith	23
E. The Union's Alleged "Misrepresentation" Cannot Jus-	
tify the Refusal to Bargain on and after April 1, 1966	26
F. The "Strike Majority" Issue was Properly Raised, and	
is Before This Court	27
G. The Appropriate Disposition of the "Strike Majority"	
Issue	28

	<i>Page</i>
II. The Company Violated Section 8(a)(1) by Threatening Reprisal for Further Contact With the Local Union President	29
III. The Company Violated Section 8(a)(1) by Threatening Loss of Benefits for Striking, and by Actually Terminating Benefits of Probationary Employees	32
A. The Threat of Loss of Vacation Pay	33
1. The Threatened Loss of Hospitalization Insurance	34
2. The Postponement of Insurance Coverage for Probationary Employees	34
IV. The Board Has Authority to Amend Complaints at the Request of the Charging Party, Over Objection of the General Counsel	35
1. The Legislative History Supports Our View that the Board Retains the Power to Amend Complaints over the Objection of the General Counsel	41
2. There Is No "Judicial Gloss" Dictating a Contrary Result	43
3. The Recent Trend of Judicial Decisions Expanding the Rights of Charging Parties Dictates that They be Allowed to Request the Board to Amend Complaints ..	45
CONCLUSION	50

TABLE OF CITATIONS

Cases

Amalgamated Utility Workers v. Consolidated Edison Co., 309 U.S. 261 ()	44
Dallas Concrete Co., 102 NLRB 1292 (1953), enforced on other grounds, 212 F.2d 298 (5th Cir., 1954)	37
Eastern Die Company, 142 NLRB 601 (1963), enforced 340 F.2d 607 (1st Cir.), cert, denied 381 U.S. 951 (1964)	31
Flast v. Gardner, Supreme Court of the U.S., No. 410, October Term, 1967, cert, granted 36 U.S.L. Week 315 (1967)	49
Frick Company, 161 NLRB No. 99, 63 LRRM 1397 (1966) 33, 34	

	<i>Page</i>
*Frito Company, Western Division v. NLRB, 330 F.2d 458 (9th Cir. 1964)	28, 40, 44, 45
Haleston Drug Stores v. NLRB, 187 F.2d 418 (9th Cir.), cert. denied 343 U.S. 815 (1951)	40
Holland Custard and Ice Cream, Inc., 158 NLRB No. 116, 62 LRRM 1186 ()	19
Hollywood Ceramics Company, Inc., 140 NLRB 221 (1962)	27
Independent Metal Workers Union, Local No. 1 (Hughes Tool Company), 147 NLRB 1573 (1964)	28
Insurance Workers v. NLRB, 46 LRRM 2028 (3rd Cir.), cert. denied 363 U.S. 806 (1960)	47
*International Union of Electrical Workers v. NLRB (NECO Corp.), 110 U.S. App. D.C. 91, 289 F.2d 757 (1960)	14, 15, 28, 40-49
Journeyman Plasterers Protective and Benevolent Society of Chicago, Local No. 5 (John P. Phillips Plastering Co., Inc. and John J. Spinelli), Case No. 13-CB-1235 (NLRB)	48
*Joy Silk Mills, Inc. v. NLRB, 87 U.S. App. D.C. 360, 185 F.2d 732 (1950), cert. denied 341 U.S. 914 (1951)	15, 21, 23, 24, 25
Leeds & Northrup Co. v. NLRB, 357 F.2d 527 (3rd Cir., 1966)	46, 47
NLRB v. Bar-Brook Mfg. Co., 220 F.2d 832 (5th Cir., 1953) ...	43
*NLRB v. Harris-Woodson Co., 179 F.2d 720 (4th Cir., 1950)	17, 18
*NLRB v. Preston Feed Corp., 309 F.2d 346 (4th Cir., 1962)	18, 19
NLRB v. Sterling Furniture Co., 202 F.2d 41 (9th Cir. 1953) ..	44
NLRB v. Whitbeck, — F.2d —, 66 LRRM 2050 (6th Cir., 1967)	21
Northwest Engineering Co., 158 NLRB No. 48, 62 LRRM 1089 (1966), enforced — U.S. App. D.C. —, 376 F.2d 770 (1967) .	22
Office of Communication of United Church of Christ v. FCC — U.S. App. D.C. —, 359 F.2d 944 (1966)	15, 49
Piasecki Aircraft Corp. v. NLRB 280 F.2d 575 (3rd Cir., 1960) .	44
Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146 (1941)	15
Quality Castings Company, 139 NLRB 928 (1962), enforcement denied, 325 F.2d 36 (6th Cir. 1963)	34, 35

* Cases chiefly relied upon are marked with an asterisk

Retail Clerks v. Food Employers Council, Inc., 351 F.2d 525 (9th Cir. 1965)	47
Retail Clerks Union Local No. 1179 v. NLRB (John P. Serpa, Inc.), — F.2d —, 64 LRRM 2764 (9th Cir. 1967)	25
Sailor's Union, 92 NLRB 547 (1950)	37, 38
Sunbeam Plastics Corp., 144 NLRB 1010 (1963)	37
*United Auto Workers v. Scofield, 382 U.S. 205 (1965) ..	14, 15, 39, 40, 44, 45, 46, 47, 49
Wellington Mill Div. v. NLRB, 330 F.2d 576 (4th Cir., 1964) ..	44

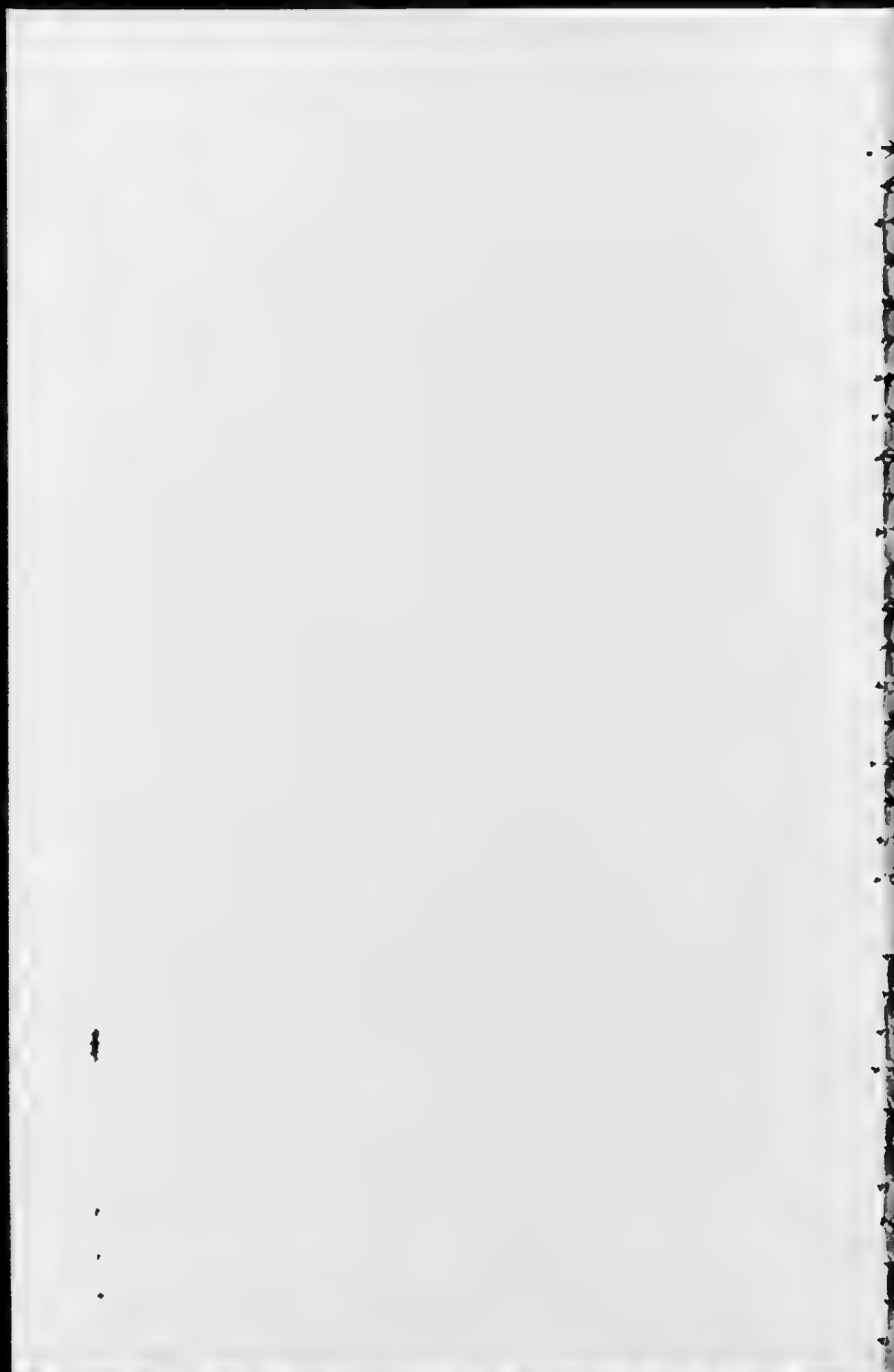
Statutes

National Labor Relations Act, as amended, 29 U.S.C. §151 et seq.	
Section 3(d), 29 U.S.C. §153(d)	14, 15, 37, 38, 39, 40, 41, 42, 43
Section 8(a) (1), 29 U.S.C. §158(a) (1)	7, 10, 11, 12, 13, 14, 29, 31, 32, 33-34, 35
Section 8(a) (3), 29 U.S.C. §158(a) (3)	34
Section 8(a) (5), 29 U.S.C. §158(a) (5)	10, 11, 12, 13, 15, 16, 23, 24, 26, 27, 28
Section 10(b), 29 U.S.C. §160 (b)	14, 15, 37, 38, 40, 41, 42, 43, 44, 45, 49
Section 10(e), 29 U.S.C. §160(e)	1
Section 10(f), 29 U.S.C. §160(f)	1
Section 10(l), 29 U.S.C. §160(l)	47

Legislative Materials

Legislative History of the Labor-Management Relations Act of 1947 (NLRB)	41, 42, 43
--	------------

* Cases chiefly relied upon are marked with an asterisk



IN THE
United States Court of Appeals
FOR THE
District of Columbia Circuit

No. 21,043

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

No. 21,338

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

LUXAIRE, INC., *Respondent.*

ON PETITION TO REVIEW, AND PETITION TO ENFORCE
A DECISION AND ORDER OF THE NATIONAL
LABOR RELATIONS BOARD

JURISDICTIONAL STATEMENT

A Petition to Review an order of the National Labor Relations Board was filed pursuant to Section 10(f) of the National Labor Relations Act, as amended, 29 U.S.C. § 160 (f), to initiate the case which has been docketed as No. 21,043. Section 10(f) specifically grants this Court jurisdiction of such a proceeding. The certified list of the record was filed by the National Labor Relations Board in this case.

A Petition for Enforcement of an Order of the National Labor Relations Board was filed pursuant to Section 10(e) of the National Labor Relations Act, as amended, 29 U.S.C. § 160(e), to initiate the case which has been docketed as No. 21,338.

STATEMENT OF THE CASE

On June 4, 1965, an election to determine whether or not the United Steelworkers of America, AFL-CIO ("the Union") was to represent the production and maintenance employees working in the Elyria, Ohio, Plant of Luxaire, Inc. ("the Company") was conducted by the National Labor Relations Board ("the Board"). This was the fifth time these employees had taken part in such an election (J.A. 168, 170).

The Union received a five-vote majority (110-105) of the ballots which were initially counted (J.A. 433). Thereafter, five challenged ballots were ordered counted, increasing the Union's majority to 114-106 (J.A. 464).

The Company timely filed a single objection to conduct affecting the results of the election. A hearing was held, and the Board ultimately denied the objection and certified the Union. The Company thereafter refused to bargain with the Union, leading to the institution of the present Board complaint case. The Company's avowed reason for refusing to bargain was to test the validity of the Board's ruling on its objection.

Facts Relating to the Company's Objection to the Election

For many years the Union has represented the production and maintenance employees of the Henry Furnace Company, in Medina, Ohio (hereinafter "the Medina plant") which is a division of the Company (J.A. 455). The Company itself is a subsidiary of the Westinghouse Electric Corporation (J.A. 177). (Between the time of the election and the hearing on the representation case the name Luxaire, Inc. came into official use, as a change in the name of the corporation, which was previously The C. A. Olsen Manufacturing Company (J.A. 484). Accordingly, the Company is sometimes referred to in the record as "Olsen").

The present election involved the Company's Elyria plant. As is usual in Labor Board Elections, both the Union and the Company sent letters to the employees prior to the holding of the election and the Union held meetings for the employees. In a meeting of 60 employees held on April 29, 1965, the Union pointed out that base rates were higher in Medina than they were in Elyria. In April a group of employees were also told that some straight time rates were higher in Elyria than they were in Medina (J.A. 149-50).

In a letter dated May 6, 1965, over the signature of its President, the Company made the following comment on wages:

"The general increase was effective April 1, the same date on which general increases have gone into effect for many years. Furthermore, the raise was the same as that given at Henry Furnace in Medina. The fact that there is a union there made no difference in the date or the size of the increase" (J.A. 174).

In a letter of May 13, 1965, the President of the Company said:

"On the matter of wages, our long-standing policy is to pay rates that are as high, or higher, than other companies in our area for the same kind of work. *You'll be interested to know that our straight time average hourly earnings for April were 53.6 cents an hour higher than the USW-represented employees at Henry Furnace in Medina. That's the way the record stands.* You don't need a union to get fair earnings.

"At Olsen hourly-average earnings have gone up over 70 cents an hour in the last eight years. This is considerably above the average increase in this area and higher than the national average.

"Incidentally, we have checked on the time values for the same work done in both Elyria and Medina and found that as much—or more—time is allowed to

perform the work at Elyria as at Medina. You don't need a union to get fair time values.

"You can see that these rates of pay and time values are determined on the same sound and accepted principles whether there is a union or not.

* * *

"I would like to make just one more comment on pay. You may know that we are constantly reviewing rates to be certain they continue to rank with the best in our area. At this time average hourly pay at Olsen is 28 cents an hour higher than the average for Lorain county. Furthermore, according to the latest figures of the U.S. Bureau of Labor Statistics, our average is 15 cents an hour higher than the average for the Cleveland area" (J.A. 176-78; emphasis supplied).

All of the letters written by the President of the Company were addressed to:

"All Hourly Payroll Employees (And for the information of all other Elyria Plant employees)."

Late in the afternoon of June 2, 1965, the Union sent a letter to all employees for whom it had home addresses (J.A. 134, 146). The letters were addressed: "*To All Hourly Rated Employees of C. A. Olsen Co.,*" and contained the following paragraph:

"Is it any wonder that he [the Company President] has made some pretty rash statements in his letters to discourage you. Just so we set the record straight, the base rates of pay at the Medina Plant are higher than the rates at Olsen, and the standards are generally better because you see, we have a voice in setting them" (J.A. 181-82).

The Company's single election objection was directed to this single paragraph of this letter, which the Company

contended was a misrepresentation. The Hearing Officer split this objection into two parts: the phrase dealing with base rates and the phrase dealing with standards (J.A. 444). He sustained that part of the objection concerned with base rates, and recommended that if after counting of the challenged ballots the Union received a majority of the valid votes cast, the election be set aside and a new election held (J.A. 457-58).

In regard to what he saw as the second part of the objection, the Hearing Officer ruled that the Company had first raised the issue of time standards or values in its letter of May 13, 1965, and the Petitioner was merely replying to it in the letter mailed on June 2, 1965. He therefore held that since the Union was replying to an argument, such campaign propaganda could not be the basis of sustaining an objection to set aside the election, and recommended the overruling of that part of the Employer's objection (J.A. 457).

The Union filed exceptions with the Board, challenging the Hearing Officer's recommendation that the election be set aside because of the "base rates" statement (J.A. 460).

The Board sustained the Union's position. It explained that even if the "base rates" statement were erroneous, it was not of sufficient gravity to have destroyed the employees' freedom of choice (J.A. 462-63). It noted that the Union had set forth its position on comparative wages as early as April, and that the Company in its May 13 letter had fully responded to the Union's position (*Ibid*). And finally, the Board recognized that the Union's statement was literally correct. "Base rates" are the rates upon which incentive earnings are computed. Base rates were higher at Medina than at Elyria. The Hearing Officer, in finding a misrepresentation, had erroneously assumed that "base rates" referred to the straight hourly rate paid to non-incentive workers (J.A. 461-62).

For all these reasons, the Board concluded that the Com-

pany's objection should be overruled. It directed that the challenged ballots be counted and that, if the Union won, it be certified (J.A. 463).

The Board's decision was issued on February 18, 1966. When the count of the challenged ballots revealed the Union still to have won, it was certified on March 2, 1966 as the collective bargaining representative of the employees at the Company's Elyria plant (J.A. 466).

The Refusals to Bargain

In a letter dated March 11, 1966, nine days after the certification was issued, the Company informed all employees that it did not intend to meet or bargain with the Union until the validity of the certification had been ruled upon by a Court (J.A. 481). In a letter dated March 15, the Union's Staff Representative demanded commencement of collective bargaining (J.A. 469). When no response had been received by March 19, a meeting was called at which the Local Union elected its officers, and the employees voted to send a letter informing the Company that if it refused to begin negotiations the officers were authorized to call an unfair labor practice strike beginning on April 1, 1966 (J.A. 470). Such a letter was sent the following day, signed by the Union's Staff Representatives and all of the Local Union officers (J.A. 470-71). In a letter dated March 21, the President of the Company advised the Union that the Company would not negotiate until there had been judicial review of the Board's decision (J.A. 472).

On March 30, 1966, the Union sent a letter to the Company informing it that a strike would indeed begin on April 1, 1966. The letter stressed that the strike was being called "to compel the Company to recognize and bargain with the Union . . ." It said that in addition to the certification issued by the National Labor Relations Board, the Union's majority representation could independently be established

by the action of the majority of the employees in joining in the strike seeking recognition. The letter stated that a new and independent demand for recognition was being made as of 4:00 p.m. on the first day of the strike—leaving ample time for the Company to determine that a majority supported the strike—and requested that negotiations begin at 5:00 p.m. on April 1. The letter also stated:

“This new demand does not detract in any manner from the lawful valid certification of the Union by the National Labor Relations Board. It is being made as a supplement to, and a repetition of, the previous demand for recognition, and is based upon the demonstrable fact that a majority of your employees are signifying the highest form of commitment to collective bargaining by voluntarily leaving their jobs to prove their support for their chosen Union representative” (J.A. 473-74).

On March 31, the Company denied the request made in the letter of March 30 (J.A. 475-76).

The strike began on April 1, 1966, and lasted until Monday, June 20, 1966, a total of 11 full weeks and a few days. On March 31st the Company's payroll records indicate that there were 260 employees in the bargaining unit (J.A. 378-412). One hundred and eighty-two (182) employees were identified as participating in the strike (J.A. 370-77). One hundred and fifty-six (156) of these employees not only stayed away from work, but actually appeared on the picket line and performed picket duty (J.A. 370-76). In the eleventh week of the strike, a majority (at least 135) of the employees were still performing picket duty (J.A. 321).

Alleged Violations of Section 8(a)(1)

Following the Union's certification on March 2, 1966, the Company embarked upon a campaign of intimidation. For convenience, this conduct can be divided into two time

periods: events prior to the strike, and events thereafter.

(1) *Events prior to the strike.* In a letter dated March 8, 1966, the Company advised all employees of increased hospitalization insurance and other fringe benefits (J.A. 477).¹ On March 11, 1966, nine days after certification, the Company posted a notice referring to a previously established ban on solicitation,² and expressly stated that "solicitation of Union membership, dues or funds . . ." was an offense subject to disciplinary action (J.A. 468). Employee Donald Alexander testified that after the notice was posted he stopped his solicitation of Union membership cards (J.A. 306).

On Monday, March 21, 1966, employee Alexander was sent by his foreman to get some equipment from another department. When he arrived in the department he did not see the foreman so he spoke to Charles Scrivens for a moment. Scrivens had just been elected President of the Local Union on the previous Saturday. The foreman then appeared and Alexander approached him. Foreman Huddleston asked Alexander what he was doing talking to Scrivens, told him Scrivens would get him in trouble, and warned: "I don't want to ever catch you in there talking to him again" (J.A. 306-07).

By March 21, the Company knew of the employees' plans to strike for recognition on April 1. Between March 21 and 29 Foreman Bernard Becker had several conversations with Harold Smith, Local Union Recording Secretary. In these conversations Becker said that he hoped that there wouldn't be a strike, and Smith told him that the Union was serious

¹ The Company had first advised the employees that these improvements were forthcoming at a banquet and by posting of a notice in early February, while its objection to the election was still pending before the Board (J.A. 311-12).

² A booklet distributed by the Company on May 28, 1965, prior to the election, contained rules of conduct, one of which forbade all unauthorized solicitation or canvassing. (J.A. 467.) before the Board. (J.A. 311-12.)

and that there would be a strike. Becker then warned that if there was a strike he would have to put four men on the job which Smith was performing. The work that Smith was doing—the assembly of electric furnaces—was being done by two men. The addition of two more men to that job would increase production, but decrease Smith's earnings due to the way the incentive pay system operated (J.A. 286-88).

In a letter dated March 23, the Company told the employees that their job security could be threatened through the "threat" as well as the actual interruption of production (J.A. 415-16).

On the afternoon of the day before the strike was scheduled to begin, on March 31, Foreman Becker called together approximately 30 employees in his department. Becker told the employees that effective April 1, they would receive wage increases of four cents per hour for incentive employees, and six, seven and eight cents per hour for non-incentive employees (J.A. 478). Becker also told the employees that the Union would not be recognized no matter how long it took. He then went on to point out that there could be repercussions from strike action. He said employees could lose hospitalization insurance and vacation pay, and could be replaced. He made no response to a specific question about the loss of vacation pay even though many employees had already worked enough time to receive their vacation pay, thereby leaving the impression that it was a certainty that it would be lost. Another employee asked: "You mean we could be discharged?" Becker said, "Yes, you could be discharged." Becker also said that if the strike lasted long enough the Company would be forced to hire new men (J.A. 285-86, 307-08).

At the same time Foreman Delis B. Huddleston was addressing about 60 employees telling them that the plant would be open during the strike and that if they went on strike they would be subject to discharge. He also told

them that their hospitalization would end on May 7, and he had no idea what the status of the other insurance was (J.A. 310-11, 328-29, 331).

(2) *Events after the strike began.* During the strike the Company sent a series of letters to the employees. On April 26th letters were sent out to probationary employees informing them that the "Company interprets your present absence from work on strike as being a break in continuous service . . ." and that their group insurance coverage would not be active until they returned to work for ninety days (J.A. 414). It was not until May 2 that non-probationary employees were told that the Company had decided to continue their insurance coverage, which the foreman had told many of them would expire as of May 7 (J.A. 413).

In connection with the return to work the Company sent a letter to all employees dated June 17. Among other things, that letter stated, "There will be no reprisals by the Company for your direct or indirect participation in the strike" (J.A. 422). However, following his return to work employee Harry Spurling was told by Traffic Manager Giest that he would not be considered for an opening as an over-the-road truck driver, a job of substantially more pay, because of his activities on the picket line. Spurling had previously held this position (J.A. 336-38).

The General Counsel's Complaint

- Upon charges filed by the Union, the General Counsel
- issued a complaint against the Company. The complaint
- alleged broadly that the Company had violated Section 8
- (a)(5) by its refusal to bargain with the Union, and by its unilateral changes in wage and fringe benefits following the Union's certification (J.A. 355-56). The complaint also
- alleged that the Company had violated Section 8(a)(1) by the incidents above-described (J.A. 353-54), with two exceptions. The complaint did not allege as violative of 8(a)

(1) the Company's withdrawal of insurance during the strike, nor the Company's refusal to assign Spurling to the job he desired upon his return after the strike.

The Union's Motion to Amend the Complaint

A week before the trial on the complaint, the Union filed a motion asking the Board to amend the complaint by adding additional allegations of violation of Section 8(a)(1) in the respects omitted by the General Counsel (J.A. 366-68). This motion was opposed by the General Counsel, and at the beginning of the hearing it was denied by the Trial Examiner, on the ground that neither the Board nor its Trial Examiner is empowered to amend a complaint over the objection of the General Counsel (J.A. 283, 483 n. 1). After the close of the General Counsel's case, the Union renewed its motion, pointing out that certain of its allegations were supported by evidence already introduced (J.A. 332). The Trial Examiner again denied the motion (*Ibid.*), and the Union made an offer of proof detailing the additional evidence it would have introduced to support its allegations (J.A. 333-39).

The Decision and Order

The Trial Examiner found that the Company had violated Sections 8(a)(5) and (1) by refusing to bargain with the Union following its certification, and by unilaterally effectuating changes in employee wages and fringe benefits (J.A. 493-95). In view of his holding based on the certification, the Trial Examiner found it unnecessary to rely upon the Company's refusal to recognize the Union's majority as demonstrated by the strike and picket line as constituting an independent refusal to bargain (J.A. 494 n. 6).³

The Trial Examiner also found that the Company vio-

³ In passing, the Trial Examiner made certain comments about the nature of the proof of majority status on the picket line (J.A. 494 n. 6), which we discuss in the argument portion of this brief.

lated Section 8(a)(1) by maintaining in effect unlawful no-solicitation rules (J.A. 487-89), by threatening employee Smith with a change in working conditions that would decrease his earnings (J.A. 491-92), and by foremen's statements that employees could be discharged, or were subject to discharge, because of their participation in the strike (J.A. 492-93). He found no violation in the comments allegedly made by Foreman Huddleston to employee Alexander (J.A. 490-91), in the foremen's remarks on March 31 about potential loss of benefits in the event of a strike (J.A. 493), or in the Company's March 23 letter indicating that jobs would be lost through the strike. Finally, the Trial Examiner in his decision reiterated his ruling at the hearing that he lacked power to amend the complaint as requested by the Union (J.A. 483 n. 1).

The Board affirmed the Trial Examiner's Decision in its entirety (J.A. 501-02).

STATEMENT OF POINTS

1. The Company violated Section 8(a)(5) of the Act by refusing to recognize and commence bargaining with the Union at any time during a strike supported by a majority of the employees.

2. The Company violated Section 8(a)(1) of the Act in its Foreman Huddleston's threatening remarks to employee Alexander, which were made because Alexander was seen talking to the Local Union President.

3. The Company violated Section 8(a)(1) of the Act by threatening employees with the loss of vacation pay if they participated in the strike.

4. The Company violated Section 8(a)(1) of the Act by threatening employees with the loss of their hospitalization insurance coverage if they participated in the strike.

5. The Company violated Section 8(a)(1) of the Act by treating the strike as a break in continuous employment for

probationary employees and, therefore, postponing their right to share in the group insurance benefits provided by the Company until they had returned to work for a complete ninety-day period.

6. The Board's conclusion that it lacks power to amend a complaint at the request of the Charging Party, over the objection of General Counsel, is legally erroneous.

SUMMARY OF ARGUMENT

1. Prior to the strike which began on April 1, 1966, the Company was informed that the Union was demanding recognition based on the proving of its support by a majority of the employees, as evidenced by their participation in the strike. The Company refused to accept that principle and did not recognize the Union, even though the majority of the employees remained on strike for more than eleven weeks.

This refusal to recognize the Union was in bad faith. The Company could not have in good faith doubted the support of the majority of the employees of the Union when it could count those employees on the picket line. It was nearly ten months since the Union's alleged misrepresentation which supposedly tainted the certification, and no good faith doubt at this time could be based upon that alleged misrepresentation as the Company had ten months to reply to that statement and availed itself of the opportunity. The Company's bad faith is further shown by the numerous unfair labor practices which it committed in the period immediately preceding the strike. The refusal to recognize the Union and begin collective bargaining constituted a violation of § 8(a)(5) of the Act.

2. The Company violated Section 8(a)(1) in ways additional to those found by the Trial Examiner. Foreman Huddleston's threats to employee Alexander that he would get in trouble by talking to the Local Union President was

a violation of Section 8(a)(1). So were the foremen's threats, on the eve of the strike, that employees would lose vacation pay and insurance by striking. A further violation of the Act was committed by the Company when, during the strike, it carried out the threat in regard to hospitalization insurance made by the foremen, by telling probationary employees that they would not be eligible for group insurance coverage until they had returned from the strike and worked a continuous period of ninety (90) days. In doing this, the Company discounted whatever service probationary employees had given the Company prior to the commencement of the strike.

3. The Board's conclusion that it lacks power to amend the complaint at the request of the Charging Party, over the objection of the General Counsel, is legally erroneous. Section 10(b) of the Act expressly gives it such power. The Board's unwillingness to apply Section 10(b) has rested on a misconception: that the Act creates only "public" rights, not "private" rights; and that therefore the Charging Party has no right to request amendments in pursuit of its "private" interests. The Supreme Court expressly rejected this view of the Act in *United Auto Workers v. Scofield*, 382 U.S. 205 (1965), declaring that the Act creates both public and private rights.

This Court, in 1960, reached the same result as the Board for a different reason. *International Union of Electrical Workers v. NLRB (NECO Corp.)*, 110 U.S. App. D.C. 91, 289 F. 2d 757. This Court believed that the later enactment of Section 3(d) of the Act in 1947 (giving the General Counsel exclusive power to "issue" complaints) was intended by Congress to take away the Board's amendment power as well. We respectfully submit that this holding was erroneous. The legislative history shows that, at the time it enacted Section 3(d) Congress considered, and rejected, proposals to amend Section 10(b) to deprive the Board of its amendment power. The conclusion is inescap-

able that Congress did not intend to abridge the Board's amendment power. (The legislative history and judicial treatment of Sections 3(d) and 10(b) are discussed at length in the argument portion of this brief).

Moreover, whatever the apparent validity of *NECO* when decided, subsequent events have sapped it of any continuing vitality. There has been a general movement toward expanding the rights of the Charging Party in NLRB proceedings. See, e.g., *Scofield*. Indeed, the Board now permits the Charging Party to litigate, over the objection of the General Counsel, claims in backpay proceedings which go beyond those advanced by the General Counsel. Its artificial application of a different rule to this case cannot be defended. The enhanced role of the Charging Party in NLRB proceedings is part of a recent revolution in the treatment of private interests throughout the administrative process. The notion that charging parties can participate in shaping the issues, so foreign when *NECO* was decided, is now obtaining widespread judicial acceptance. See, e.g., *Office of Communication of United Church of Christ v. FCC*, — U.S. App. D.C. —, 359 F. 2d 994 (1966).

ARGUMENT

I. THE COMPANY VIOLATED SECTION 8(a)(5) WHEN IT REFUSED TO RECOGNIZE AND BARGAIN WITH THE UNION DESPITE THE MAJORITY SHOWN BY THE STRIKE AND ON THE PICKET LINE

The Board found that the Company violated Section 8 (a)(5) by refusing to recognize and bargain with the Union following its certification. We believe this holding was correct. *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146 (1941). We assume that the Board will defend its decision on this issue at length, and accordingly we will refrain from extended discussion of the point.

Instead, we shall devote our attention to the alternative basis for finding a refusal to bargain, which the Board deemed it unnecessary to rely upon: that the Company could not have had a good faith doubt of the Union's majority status after the April 1 strike began. In the unlikely event this Court were to agree with the Company that the certification was defective, we submit that the Board's finding of refusal to bargain should be enforced on this alternative ground.

A. An Employer May Be Obligated to Recognize and Bargain With a Union Even Without a Valid Election Victory

In a landmark decision in 1950, this Court early recognized that an election victory is not a *sine qua non* for the creation of an obligation to bargain. Even without an election, an employer violates Section 8(a)(5) where the following three elements are present: (1) a request for bargaining by the Union; (2) a refusal of the request; and (3) the lack of a good faith doubt as to the Union's majority status. *Joy Silk Mills, Inc. v. NLRB*, 87 U.S. App. D.C. 360, 185 F.2d 732 (1950), *cert. denied* 341 U.S. 914 (1951).

As we show herein, the Company's refusal to recognize and bargain with the Union after the strike began on April 1, 1966, is governed by *Joy Silk Mills*. Thus, wholly apart from the validity of the certification, the Union is entitled to a bargaining order.

B. The Request for Bargaining and The Denial of That Request

The Union requested bargaining in its letter of March 30, 1966, very clearly specifying that the strike of April 1 was "being called to compel the Company to recognize and to bargain with the Union . . ." (J.A. 473-74). The Company was requested to count the employees that would be on strike April 1 and upon ascertaining that a majority of its employees was on strike, to contact the Union for the beginning of collective bargaining.

On March 31, without waiting for the strike to begin, the Company rejected the Union demand. The Company's letter of March 31 rejected a picket line as reliable proof of claimed majority status (J.A. 475-76). The Company's denial was a clear statement of its position, but it was contrary to well-established law.

C. Support of the Strike and Picket Line Participation as Proof of Majority Status

After the conclusion of the more than eleven (11) weeks' strike, and in preparation for the hearing in the unfair labor practice case, the Union prepared lists showing the names and addresses of all of the employees who had participated in the strike. Two lists were prepared. One showed the employees who had not only stayed away from work during the strike, but had actually performed picket duty in front of the Company's plant. That list contained 156 names (J.A. 370-76). A second list contained the names of 26 employees who had joined the strike, but who did not participate in the actual picketing (J.A. 376-77). In response to a subpoena from the Charging Union the Company presented at the hearing a list of employees in the bargaining unit on March 31, 1966. That list contained a maximum of 260 employees (J.A. 378-412). Thus, a clear majority of the Company's employees actively participated on the picket line in support of the Union's demand for recognition and bargaining. That majority was, of course, totally visible to the Company.

Proof of a Union's status as a representative of the majority of the employees in an appropriate bargaining unit through majority support of a strike was recognized by the Court of Appeals of the Fourth Circuit in *NLRB v. Harris-Woodson Co.*, 179 F. 2d 720 (1950). That case is in many ways a parallel to this case. That case too, began with an election in which the Union was chosen as collective bargaining representative. However, there, the Company be-

gan negotiations with the Union. At first those negotiations were not successful and a strike was initiated. The strike was settled by partially successful negotiations. An agreement was signed that left certain issues open for further bargaining. During the second period of bargaining the Company challenged the Union's majority and the Union filed unfair labor practice charges. The Board found in a first case, which was enforced by the Court of Appeals, that the Company did not have a basis for doubting the Union's majority, and the Union in fact did represent a majority of its employees. Following that order the Company continued to refuse to bargain and then the Union called a strike of the employees to compel bargaining. At the conclusion of the second strike the Company refused to reinstate certain employees, and that gave rise to the second unfair labor practice proceeding. In the 1950 opinion enforcing the Board's second finding of unfair labor practices, the Court was faced by a further alleged doubt of the Union's majority status. The Court responded to that contention by saying:

"The contention that the Company was in doubt as to the Union's representing a majority of employees is little short of absurd in view of the fact that practically all of the employees went out on strike in an attempt to compel the Company to bargain with the Union" 179 F. 2d at 723.

The absurdity of the Company's position in *Harris-Woodson* is no different from the attempt on the part of the Company here to refuse to recognize the proof of majority support in this case.

The Fourth Circuit reaffirmed the validity of proof of majority status through picket line support in its decision in *NLRB v. Preston Feed Corporation*, 309 F. 2d 346, 350-51 (4th Cir. 1962):

"There is no question as to the Company's knowledge of the Union's representative status because it was well aware that its employees were in the picket line protesting the Company's discharge of Matthews. In *NLRB v. Harris-Woodson Co.*, 4 Cir., 179 F. 2d 720, 723, we said that it was little short of absurd for an employer to express a doubt as to the representative status of a Union when the majority of the employees had gone on strike under its guidance."

The Board itself has recently reaffirmed its position that any doubt an employer may have as to majority status is removed when a majority of the employees strike for recognition. *Holland Custard and Ice Cream, Inc.*, 158 NLRB No. 116, 62 LRRM 1186.

In this very case, the Trial Examiner noted at the hearing that "picket line participation has always been regarded as evidence of support of the striking labor organization" (J.A. 291). In his decision, however, he did not rely upon this alternative basis for finding a refusal to bargain. In *dictum*, his decision (J.A. 494 n. 6) suggests two possible obstacles to such a finding here, upon which we wish to comment: (1) that the list of employees who struck and performed picket duty might not constitute proof that the Company *knew* a majority of its employees were picketing and/or striking; and (2) that the list might not constitute sufficient proof of the fact that the employees named hereon actually engaged in the strike and/or picketing. Neither of these concerns is valid.

(1) The Trial Examiner's concern that the list was not sufficient proof that the Company *knew* a majority of its employees were striking and picketing is both legally and practically untenable. Picketing was conducted solely at the Company's plant and the Company's supervisors necessarily observed the picket line as they went to and from work each day, and while they were at work. Based upon

that observation the Company must certainly have ascertained who actually participated in the picketing and who did not participate. The reason to make such verification was known to the Company, as it had been forewarned in the letter of March 30 that the Union was relying upon its majority representation in the strike as a further basis for demanding that the Company begin collective bargaining. Beyond that, this basis for finding a refusal to bargain was specifically set forth in the unfair labor practice charge filed by the Union on June 21, 1966, the day after the employees returned to work (J.A. 350-51). The reason to validate such information and the opportunity to do so were available to the Company.⁴ Moreover, it is inconceivable that the Company did not know, on any given day, how many employees were absent from work and, knowing that for eleven consecutive weeks a majority of its employees was absent, the Company is hard put to claim that it did not know a majority supported the strike.

Furthermore, as a legal matter, it is well settled that a Company cannot rely upon its own refusal to observe the obvious as a basis for claiming that it continued to have a good faith doubt. This issue has arisen most frequently in cases where the Union claims majority status on the basis of authorization cards. If the other elements of refusal to

⁴The Trial Examiner apparently believed the number of employee pickets could not be ascertained because other persons also picketed. This statement, too, has no relevance. If in doubt of the majority during the strike, the Company could have asked for proof from the Union. Furthermore, it is hard to believe that supervisors could not identify the employees they supervise. In any case, those persons who were not employees who appeared on the picket line were few, and none appeared regularly except the easily identifiable three Union staff representatives. The total of non-employee pickets was only 15 or 20. In addition, to the three staff representatives of the Union, this group included 4 to 6 employees from the Medina Plant who appeared only on the first morning of the strike, and a group of the wives of the striking employees who appeared for about a week and a half out of the total eleven week strike. (J.A. 301-02.)

bargain are present, an employer claim that it never saw the cards, and therefore retained its "doubt", has uniformly been rejected as a defense. See, e.g., *Joy Silk Mills, supra*, 185 F. 2d at 741; *NLRB v. Whitbeck*, — F. 2d —, 66 LRRM 2050 (6th Cir. 1967).

(2) The Trial Examiner's other contention, that the lists (J.A. 370-77) were not a reliable indication of those who struck and picketed, does not comport with the record. The lists were presented through the testimony of the employee Harold Smith, Recording Secretary of the Local Union. Smith indicated that the lists were compiled by Charles Scrivens, Local Union President; Ray Bentley, Local Union Vice-President; and Smith. They jointly reviewed, on the basis of their own knowledge and observations, the eleven-week strike and determined which employees had picketed and which employees had not gone in to work, even though they did not picket. The indication of those names had been sent to counsel who had a list prepared for presentation in evidence (J.A. 292). That list was later verified by all three of the individuals as being an accurate statement of their recollection (J.A. 305). Upon cross-examination of Smith, and the subsequent testimony of employee Bentley in regard to the list, it was further brought out that two types of underlying documents were used in the preparation of the lists: they went over a list of employees who had signed membership cards in the Union, and put marks next to those persons whom they had observed striking and picketing, and they refreshed their direct recollections with 135 food vouchers which had been given to employees who had picketed in the last week of the strike (J.A. 298-99, 313-14, 317-20, 327). Bentley also testified that they observed at least two employees who stood picket duty who had not obtained food vouchers (J.A. 327). Both Bentley and Smith indicated that they had spent almost all of the days of the strike on the picket line (J.A. 305, 314). Smith indicated that he could personally identify on sight 153 of the 156

people on the list who participated in picketing duty (J.A. 300).

In short, the lists were an orderly way of getting into evidence the final conclusion as to the majority of the employees both participating in the strike, and participating in picketing during the strike. The evidence further revealed that at least 135 employees performed picketing duty during the last week of the strike, indicating that a majority of the 260 people in the bargaining unit remained in active support of the Union by picketing as well as by staying away from work, for the entire eleven weeks of the strike (J.A. 321).

This evidence is more than sufficient to indicate that the lists were representative. Of course, theoretically, it would have been possible to call each and every employee in the bargaining unit to find out whether or not they had struck or whether they had participated in the picketing. Such a procedure, however, is a practically impossible way to proceed. In similar circumstances, the Board has recognized and approved the introduction of summary evidence which, unlike the present case, was not even based upon personal observation, and this Court has approved that procedure. *Northwest Engineering Co.*, 158 NLRB No. 48, 62 NLRB 1089 (1966), enforced — U.S. App. D.C. —, 376 F. 2d 770 (1967).

Furthermore, it is important to note that there was no objection to the introduction of the lists by Counsel for the General Counsel. The only objection made to their introduction was by Counsel for the Company, and that objection was based solely upon relevancy (J.A. 289, 292, 293). There is nothing in the record which challenges the adequacy of the lists to prove what they are intended to prove. The Company offered no contraverting evidence. Their relevancy has already been discussed, and was admitted by the Trial Examiner. There can be no real challenge to the weight of the evidence in the proof that 182 employees par-

ticipated in the strike; 156 of them performed picketing duties, and at least 135 of them performed picketing duty in the closing week of the strike. Eleven weeks of continual majority support in an effort to obtain recognition is clear upon this record, and as we have shown, it follows that the Company could not have had a good faith doubt concerning the Union's majority.

D. The Company's Contemporaneous Commission of Unfair Labor Practices Designed to Destroy the Union's Support Is Additional Evidence of Its Bad Faith

We have shown above all that is necessary to prove a violation of Section 8(a)(5). However, the record contains additional evidence of "bad faith" which bolsters the correctness of our position: the Company's contemporaneous commission of unfair labor practices designed to destroy the Union's majority.

This Court recognized in *Joy Silk Mills, supra*, that an employer violates Section 8(a)(5) when its refusal to bargain is "due to a desire to gain time and to take action to dissipate the Union's majority . . .". (185 F. 2d at 741). This Court approved the Board's view that:

"In cases of this type the question of whether an employer is acting in good or bad faith at the time of the refusal is, of course, one which of necessity must be determined in the light of all relevant facts in the case, including any unlawful conduct of the employer, the sequence of events, and the time lapse between the refusal and the unlawful conduct" (185 F. 2d at 742).

It is perfectly evident in this case that the Company's refusal to recognize the Union was motivated by a desire to dissipate its majority status. The Trial Examiner and the Board found that the unfair labor practices began a few days after the Certification was issued, with the Employer's posting a new notice forbidding Union solicitation in the

plant. The campaign of unfair labor practices accelerated after the Company received the Union's letter indicating there would be a strike on April 1. Immediately, Foreman Becker began to threaten employee Smith with a decrease in his earnings. The campaign culminated with the speeches given by the Foremen on March 31, threatening the employees with discharge for participating in the strike. It is important to remember that March 31 was the same day on which the Company denied the Union's request for recognition based upon participation in the strike.

In addition, the Union argues at other places in this Brief that the Trial Examiner and the Board erred in not finding further unfair labor practices in the threat made by Foreman Huddleston to employee Alexander for speaking to Local Union President Scrivens, and in other comments dealing with such matters as vacation pay and hospitalization insurance which were made by the Foremen in their speeches. Also, the Union believes that there was an additional violation present in the letters which the Company sent to probationary employees during the strike, indicating to them that the beginning of their insurance coverage was being adversely affected by their participation in the legal strike. This letter carried out one of the threats the Foremen had made in their speeches.⁵ Whether or not any or all of the Union's contentions as to the additional unfair labor practices are accepted, those violations found by the Trial Examiner and the Board are in themselves adequate for application of the theory of *Joy Silk Mills* to require a finding of bad faith on the part of the Company and the issuance of a bargaining order to redress this violation of § 8(a)(5) of the Act.

Furthermore, the facts of this case are such that even if

⁵ The unfair labor practices referred to here are in addition to the violations arising out of the Company's granting wage increases and other benefits during February and March. The status of those violations depends primarily upon the upholding of the Certification.

the Company had not committed the numerous unfair labor practices which it did commit, its bad faith would be shown by its delay in recognizing the Union even though the Union's majority support continued for the full eleven weeks of the strike. That kind of delay in recognition, in order to gain time to dissipate the Union's majority, is one of the bases of the theory of *Joy Silk Mills*, and was applied as the exclusive basis for a finding of bad faith in *Retail Clerks Union Local No. 1179 v. NLRB, (John P. Serpa, Inc.)* — F. 2d —, 64 LRRM 2764 (9th Cir. 1967). In *Serpa*, after being shown proof of the Union's majority representation, the Company promised to contact the Union shortly after contacting its attorney. However, the Company did not contact the Union after speaking with its attorney but said nothing until the Union filed unfair labor practice charges. Following that the Company then met with representatives at the Union, and told them that it did not want to recognize the Union and that this was a matter for its trade association. On these facts the court found that the delay in recognition of the Union indicated the Company's "rejection of collective bargaining principles." — F. 2d at —, 64 LRRM at 2768.

The Company in this case had even better knowledge than the Company in the *Serpa* case of the Union's status as the representative of the majority of the employees in the bargaining unit. Also, the delay in this case was not just a few days, which the Court found unjustified in the *Serpa* case, but lasted more than eleven weeks throughout which period of time the Union continued to maintain its status as a majority representative. There is nothing in the record that indicates any reason why the Company did not extend recognition throughout the long strike, except its complete rejection of the strike as being a method of proving majority representation. That position is legally untenable, and the Company's attempt to hide behind that position is further evidence of its lack of any good faith doubt of the

Union's status as representative of the majority of the employees.

Upon any or all of these theories, the Company's bad faith is amply demonstrated on this record. The addition of this element to the demand and the refusal, and the proof of majority status, reinforces the necessity for finding a violation of Section 8(a)(5) of the Act in the Company's refusal to commence negotiations with the Union, not only shortly after the strike began, but throughout its duration.

E. The Union's Alleged "Misrepresentation" Cannot Justify the Refusal to Bargain on and after April 1, 1966

We anticipate an argument from the Company that, if this Court accepts its contention that the alleged "misrepresentation" vitiated the certification, it must likewise conclude that the "misrepresentation" vitiated the subsequent demonstration of majority by the strike and picket line. That argument will not hold water in light of the time sequence involved.

The alleged misrepresentation was contained in a letter dated June 2, 1965, two days before the Board election. If this Court were to vitiate the certification, it would necessarily be because of the proximity between the letter and the election.

The strike, in which the Union again proved its majority, occurred ten months later. The Company had ample time, and indeed made ample comment on that misrepresentation by posting notices in the plant following the Hearing Officer's Report and Recommendations issued in the representation case, and by posting another notice following the Board's Decision in the representation case (J.A. 330-31). In addition to what the record reveals that it actually did, the Company, of course, had unlimited access to its employees between the election of June 4, 1965 and the beginning of the strike on April 1, 1966. During that period of time, the Company could have taken whatever action it felt

was necessary to overcome whatever real or imagined effects the alleged misrepresentation of the Union may have had. Therefore, it cannot be said that the actions of June, 1965 in any way tainted the proof of majority made anew beginning on the morning of April 1, 1966. It is, of course, the Board's basic approach to these problems that even when one is speaking of a clear misrepresentation, it is only a basis for setting aside an election, one method of proving majority status, if the misrepresentation is made so close to the time of the election that the other parties do not have an adequate opportunity to reply. *Hollywood Ceramics Company, Inc.*, 140 NLRB 221 (1962). There can be no question that nearly ten months is sufficient time in which to reply.

F. The "Strike Majority" Issue was Properly Raised, and Is Before This Court

We anticipate that the Company will argue (as it did in its Motion to Transfer, p. 11), that the Union's alternative 8(a)(5) claim — based on the "strike majority" — is not properly in issue because not espoused by the General Counsel. This contention is without merit.

It was settled early in the hearing that this theory of the Union was within the scope of the Complaint although the General Counsel chose not to rely upon it. This was made quite clear in the following exchange between the Trial Examiner and Counsel for the General Counsel, which took place during the discussion as to the admissibility of Charging Party's Exhibit No. 1 and the Union's pursuing of a line of inquiry and presenting evidence in regard to the majority strike.

TRIAL EXAMINER: Mr. Hill, what is your position with respect to the propriety of this line of inquiry?

MR. HILL: Well, I think the facts which the

Charging Party wishes to bring out at this time, well, while this evidence is factual I think the complaint is broad enough to encompass this theory which he is presenting. However, the General Counsel does not make this argument and this theory part of his case (J.A. 290-91).

In another part of this Brief, the Union argues that the Charging Party has a right to propose amendments to a complaint, to advance theories not encompassed within the complaint. Whatever the correctness of that contention, however, it has been uniformly held that the Charging Party may advance theories which *are* encompassed within the complaint, even if the General Counsel remains neutral (as here) or *opposes* the Charging Party's theories. This Court has expressly so declared. *International Union of Electrical Workers v. NLRB (NECO Corp.)*, 110 U.S. App. D.C. 91, 289 F. 2d 757, 760 (1960):

"During the hearing the charging party can . . . propound theories which the General Counsel fails or refuses to rely upon."

See also to the same effect, *Frito Company, Western Division v. NLRB*, 330 F. 2d 458 (9th Cir. 1964); *Independent Metal Workers Union, Local No. 1 (Hughes Tool Company)*, 147 NLRB 1573 (1964).

G. *The Appropriate Disposition of the "Strike Majority" Issue*

The Union believes that the underlying certification in this case is appropriate, and the Company's refusal to honor that certification is a more than adequate basis for finding a violation of Section 8(a) (5) of the Act and enforcing the Board's order based upon the Company's conduct in response to the certification. If the Court agrees with the view of the Board and the Union in regard to the validity of the certification, then the Court need not reach the issue

of whether or not a separate refusal to bargain took place because of the failure to commence bargaining in response to the strike by the majority of the employees. However, if for any reason the Court has any question or doubt about the validity of the underlying certification, then the Court should reach the issue of the majority strike as the basis for a refusal to bargain violation on its merits.

This case should not be remanded for further consideration by the Board. The "strike majority" issue was fully tried. All that remains is the necessity for a legal determination. The governing law is clear, as we have shown.

We need not tell this Court that a remand and further delay will only mean that employees, a majority of whom selected the Union as their bargaining representative in June of 1965, will be further delayed in their efforts to have a collective bargaining representative to deal with their Company. The nearly two-and-one-half year delay which has now occurred should not be further extended.

II. THE COMPANY VIOLATED SECTION 8(a)(1) BY THREATENING REPRISAL FOR FURTHER CONTACT WITH THE LOCAL UNION PRESIDENT

Paragraph 8(A) of the Complaint alleged that the Employer, through Foreman Huddleston, violated Section 8 (a)(1) of the Act by threatening employees "with reprisals because of their Union activities, sympathies and desires." The evidence in support of this allegation dealt with the incident of March 21 or 22, just after the Company received the Union's letter of March 20 (J.A. 470-71). This is the letter which informed the Employer of the Union's intention to strike on April 1, 1966, if negotiations were not underway. This letter was signed by the newly-elected officers of the Local Union, including the President, Charles Scrivens. This incident involves a conversation between employee Donald Alexander and Foreman Huddleston after Alexander had been seen talking to Scrivens.

Alexander testified that when he couldn't find the foreman in the department, where he had been sent to get some special motors, he talked to Scrivens for a moment on some immaterial matter, and then when he saw Huddleston coming over, he went to meet him to ask him about getting the items he needed. Alexander says that Huddleston then threatened him and told him not to talk to Scrivens any more for "he will get you in trouble. . . . I don't want to ever catch you in there talking to him again" (J.A. 307). He told him to get out of the department and stay out. This threat by Huddleston took place before Alexander could show him the numbers of the motors he was to obtain.

The Trial Examiner did not find a violation here, as he believed Huddleston's claim that he saw Scrivens and Alexander talking together, and that the basis for his reprimand and threatening remark to Alexander was because he was bothering an employee in Huddleston's department (J.A. 490).

The Trial Examiner treated this as a problem of the preponderance of the evidence. Careful reading of the Record indicates that Huddleston's recollection of this event was not very specific. He could not recall the time of day the conversation took place (J.A. 344). Huddleston did not remember whether or not he used the word "trouble" (J.A. 346). The word "trouble" only fits the rationale the General Counsel and the Union use to explain the incident. Therefore, the more probable conclusion on this record is that Huddleston did threaten Alexander because he was talking to the newly elected local Union President just after a strike became imminent, and not because of some normal employee work problem.

A reversal of the Board's finding establishing a violation in accord with Paragraph 8(A) of the Complaint would change the terms of the Board's order. Paragraph 1(B) of the present order forbids threatening employees with reprisals if they exercise their "right to strike or engage in

other lawful concerted activities under the Act" (J.A. 497). This portion of the order was designed to remedy, and is accordingly confined to, violations alleged in Paragraphs 8 (B) and 9 of the complaint, which dealt with threats specifically related to strike activities.

The type of additional provision which would have appeared in the Board Order had Paragraph 8(A) of the Complaint been sustained is evident from *Eastern Die Company*, 142 NLRB 601 (1963), enforced 340 F. 2d 607 (1st Cir.) *cert. denied* 381 U.S. 951 (1965). In that case, the Board upheld an allegation that a supervisor said talking to union organizers "would get the boys in trouble." 142 NLRB at 608, 614. This is identical to the allegation of Paragraph 8(A) of the Complaint in the instant case, and the remedy which the Board there entered contained a prohibition against:

"(C) Threatening employees with economic reprisals *because of their adherence to* the above-named or any other labor organization." 142 NLRB at 604-05 (emphasis supplied).

This order is considerably broader than the one entered in the instant case.

The Trial Examiner and the Board erred in failing to find a violation in the Alexander-Huddleston incident. The Court should find such a violation, and instruct the Board to issue an appropriate addition to its order to redress this violation.

This matter assumes somewhat more than the usual importance of an additional 8(a)(1) violation because the situation in which the incident took place was one where the Union was not being recognized by the Employer as the bargaining representative. Under those circumstances, the Union carries a tremendous burden in maintaining a viable, in-plant organization which will be ready to effectively rep-

resent the employees when the recognition which the Union is legally due is finally accorded. It appears in this case that it will be the order of this Court which will finally force such recognition. It is important in such a situation that the right of employee contact with the officers of the local Union be protected. Any attempt at isolation of the local Union officers must undercut the Union's strength, and become an important factor when collective bargaining finally begins. Therefore, this violation should be given special attention, and an appropriate order should be issued.

III. THE COMPANY VIOLATED SECTION 8(a)(1) BY THREATENING LOSS OF BENEFITS FOR STRIKING, AND BY ACTUALLY TERMINATING BENEFITS OF PROBATIONARY EMPLOYEES

Foremen Huddleston and Becker in their remarks to the Employees not only threatened them with discharge for joining in the strike, but also took pains to inform the employees that their hospitalization insurance benefits would be affected if they struck. Foreman Becker also said that vacation pay would not be forthcoming (J.A. 492). Becker maintained silence in response to a direct question by an employee regarding the fact that the Company's vacation policy only required an employee to work 60 percent of the payroll periods preceding the June 1 or December 1 qualification date, whichever happened to apply to the employee based upon his original date of hire (J.A. 286). On April 26th probationary employees were told they had lost their credit toward the ninety days needed for insurance coverage because they participated in the strike.

Each of these items constitutes an additional violation of § 8(a)(1) which neither the Trial Examiner nor the Board found. The Trial Examiner took note of the vacation pay and hospitalization insurance comments, but did not find violations in these statements. He restricted his finding of violations to the Foremen's statements that strikers could be

discharged (J.A. 493). The Board affirmed those findings. All of the additional violations argued for here are encompassed within paragraphs 8(B) and 9 of the Complaint.

A. The Threat of Loss of Vacation Pay

Foreman Becker indicated that a strike could lead to a loss of vacation pay and maintained silence when an employee asked him how that could be since many employees had already met the requirement of having worked the minimum of 60 percent of the pay periods within their qualifying year. This would of course be true for almost all employees whose qualifying date was June 1, as ten months had elapsed since their qualifying period began. The only other qualification the Company sets forth for vacations is seniority, and of course, a large number of employees had met the minimum one year seniority and were entitled to at least one week vacation. Other employees were entitled to more.

The Board itself has recently found a violation in a similar threat of the loss of vacation pay. In *Frick Company*, 161 NLRB No. 99, 63 LRRM 1397 (1966) the Board upheld the Trial Examiner's finding of a violation where the Employer sent striking employees a letter telling them that they could lose their vacation pay if they did not return to work on a day which the Company's vacation policy specified they must be working in order to receive the pay. A direct parallel also exists in that case as the Employer there had a requirement that employees must work 75 percent of the pay periods during the qualifying year. In *Frick Company*, the Board went beyond what it would have had to do in this case by finding that the Employer could not insist upon the employees' presence at work on a certain date even though specified in its vacation policy, if those employees were on strike. It held that the employees still qualified for vacation pay and that the letter telling them that they would not so qualify was a violation of both Sections, 8(a)

(1) and 8(a)(3) of the Act. *Frick Co., supra*, TXD 12-13, 25-26. In this case the Employer paid the employees' vacation pay so there is no 8(a)(3) violation, but its threat not to release the vacation pay due to striking employees is an 8(a)(1) violation.

1. *The Threatened Loss of Hospitalization Insurance*

The Foremen also indicated to the employees that their insurance coverage terminated as of May 7 (J.A. 492). Although the Employer continued this coverage during the strike, and so informed the employees, the threat of discontinuance without telling the employees that they might maintain their own coverage through payment of the premium, or in any way indicating to them why the Employer's insurance agreement required such termination for employees on strike, was a blatant threat of loss of benefits in violation of Section 8(a)(1).

2. *The Postponement of Insurance Coverage for Probationary Employees*

On April 26, 1966, a letter was sent to all probationary employees by the Company's Personnel Director (J.A. 414). In this letter the Company told all the probationary employees that their time on strike would be considered a break in their continuous service, and that therefore their coverage under all the Employer's group insurance plans would be postponed until they had reported back to work for ninety days. The Employer presented no evidence indicating that the insurance arrangement between the Employer and its insurance carrier required the Employer to take this step. Furthermore, the use of the word "interprets" in the letter indicates that this is not a necessity, but a matter of discretion with the Company.

In similar circumstances the Board has held it a violation to use the time employees are on strike to effect a decrease in the benefits they receive. *Quality Castings Company*,

139 NLRB 928 (1962), *enforcement denied*, 325 F. 2d 36 (6th Cir. 1963). In *Quality Castings* the Board found the violation in the Employer's change in the criteria used for distribution of its profit sharing plan in such a manner that those criteria adversely affected employees who remained on strike for an extended period of time.

In its reversal of the Board's decision, the Court accented that the action of the Employer in regard to the plan "made absolutely no reference to strike time, or to anything connected with the Union or with Union activity." 325 F. 2d at 43. The Court also pointed out the plan disqualified employees who were not involved in the strike as well as those who were. 325 F. 2d at 43. This qualification and explanation of its ruling setting aside the Board's order by the Court, indicates that even that Court would on the facts of this case find a violation. Here, the letter of April 26th specifically said that it was the strike which was causing an interruption in the period of time required to qualify for insurance benefits. The basic unfairness of this procedure becomes clearer if one takes the hypothetical employee who had completed 85 or 89 of the 90 days of his probationary period and then joined the strike. That employee's investment in employment with Luxaire, Inc. was very seriously affected by his exercising his right to join in protected concerted activity. Probationary employees must be protected in the exercise of their Section 7 rights just like other employees. A further violation of Section 8(a)(1) should be found, and the Board should be instructed to issue an appropriate order.

IV. THE BOARD HAS AUTHORITY TO AMEND COMPLAINTS AT THE REQUEST OF THE CHARGING PARTY, OVER OBJECTION OF THE GENERAL COUNSEL

A week before the trial on the complaint, the Union filed a motion asking the Board to amend the complaint, to add

allegations above and beyond those covered in the complaint (J.A. 366-68). This motion was opposed by the General Counsel (J.A. 368-69), and at the beginning of the hearing it was denied by the Trial Examiner, on the ground that the Board is not empowered to amend a complaint over the objection of the General Counsel (J.A. 283, 483 n. 1). After the close of the General Counsel's case, the Union renewed its motion, pointing out that certain of the new allegations were supported by evidence already introduced (J.A. 332). The Trial Examiner again denied the motion (J.A. 332-33), and the Union made an offer of proof detailing the additional evidence it would have introduced to support its allegations (J.A. 333-39). The Union excepted to the denial of its motion but the Board, *sub silentio*, affirmed it.

Among the allegations which the Union sought to add to the complaint were that the Company unilaterally discontinued insurance coverage for employees who participated in the strike, and that the Company denied a promotion to an employee because of his participation in the strike. These allegations relate to subjects totally different from those remedied by the Board's order.

Manifestly, if the Board had granted the Union's motion to amend the complaint, and found the additional violations alleged, employees would have received substantial economic benefits as a remedy (recompense of insurance benefits denied, and backpay to the employee denied promotion) and additional "cease and desist" provisions would have been included in the order. There can be no question, therefore, but that the Union is substantially aggrieved by the Board's treatment of these issues.

We believe the Board's decision that it lacks power to amend complaints at the request of the Charging Party is legally erroneous. As we show herein, the Board has such power. Since the Board has not passed upon the merits of the Union's motion, denying it solely on the assumed lack

of power, this portion of the case must be remanded to the Board for a ruling "on the merits" of the Union's motion.

The Board's power to amend complaints is expressly set forth in Section 10(b) of the Act, 29 U.S.C. § 160(b):

"Any such complaint may be amended by the member, agent or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon."

This provision was a part of the original Wagner Act enacted in 1935, and has remained unchanged ever since.

The Board believes, however, that the subsequent enactment in 1947 of Section 3(d) of the Act, 29 U.S.C. § 153 (d), deprives it of the power which it previously possessed to amend complaints at the request of the Charging Party. *Sailors' Union*, 92 NLRB 547 (1950); *Dallas Concrete Co.*, 102 NLRB 1292, 1296-97 (1953), *enforced on other grounds* 212 F. 2d 298 (5th Cir. 1954); *Sunbeam Plastics Corp.*, 144 NLRB 1010, 1011, n. 1 (1963). Section 3(d) provides, in relevant part:

"There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. *He shall have final authority, on behalf of the Board, in respect to the investigation of charges and issuance of complaints under Section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.*" (Emphasis supplied.)

We think the Board is misreading the statute. While Section 3(d) gives the General Counsel final authority over the *issuance* of complaints, it does not give him final authority over the *amendment* of complaints. On the contrary, Section 10(b) expressly authorizes the Board "in its discretion" to amend complaints at any time prior to the entry of its order.

The Board's misreading of the statute, first announced in 1950, was premised exclusively upon a conception of the statute which has since been repudiated by the Supreme Court: that the statute creates only "public" rights, not "private" rights, and that accordingly only the General Counsel (who enforces the "public" interest) and not the Charging Party, can seek amendments. As the Board explained its view, *Sailors' Union*, 92 NLRB 547, n. 1:

"Sections 8(a) and (b) of the Labor Management Relations Act create public and not private rights (Phelps Dodge Corp. v. NLRB, 313 U.S. 177). The protection of those rights is entrusted to public officials and not to private parties. The General Counsel of the Board has 'final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under Section 10, and in respect of the prosecution of such complaints before the Board . . .'. Thus, the decision whether to issue a complaint, the contents of the complaint, and the management of the prosecution before the Board is entrusted to the sole discretion of the General Counsel (see Haleston Drug Stores, Inc., 86 NLRB 1166). It follows that only the General Counsel may move to amend a complaint to allege an additional violation of the Act. Otherwise the management of the cause would pro tanto be taken from the General Counsel and entrusted to a private party, which is contrary to the scheme of the statute and the specific provision of Section 3(d). As the General Counsel has declined to join in the charging

party's motion, it is hereby denied." (Emphasis supplied.)

In 1965, the Supreme Court exploded the Board's long-held notion that the Act creates only "public" rights. *United Auto Workers v. Scofield*, 382 U.S. 205 (1965). The particular issue in that case was whether the Charging Party has a right to intervene in support of a Board decision challenged in a court of appeals. The Board vigorously opposed such right, contending that the Act creates no "private" rights for the Charging Party to protect. The Supreme Court held that the Act *does* create private rights:

"[T]he Board reasons [that] the Charging Party stands only to become a beneficiary of an order entered. As such, he is but another member of the public whose interests the Board is designed to serve. The Labor Board is said to be the custodian of the 'public interest', to the exclusion of the so-called 'private interests' at stake . . . We disagree.

"In prior decisions, this Court has observed that *the Labor Act recognizes the existence of private rights within the statutory scheme*. These cases have, to be sure, emphasized the 'public interest' factor. *To employ the rhetoric of 'public interest', however, is not to imply that the public right excludes recognition of parochial private interests . . .*

"In short, we think that the statutory pattern of the Labor Act does not dichotomize 'public' as opposed to 'private' interests. . . Rather, the two interblend in the intricate statutory scheme," (382 U.S. at 218, 220; emphasis supplied).

With *Scofield*, the entire predicate for the Board's denial of power to amend complaints at the request of the Charging Party crumbles. It remains true, of course, that only the General Counsel may issue complaints, for Section 3(d) so commands. In this manner, the agency controls such

considerations as budgetary limitations, possibilities of settlement, and determining which cases are important enough to warrant trial. But once a complaint has issued, and the administrative machinery has been set in motion, the question of how far to proceed is one with respect to which the Charging Party and the Board have a role. The Charging Party may bring before the Board evidence which it believes violative of the Act, and the Board "in its discretion" may amend the complaint to encompass that evidence. Section 10(b), *supra*.

The Board's fundamental error was the assumption that Section 3(d) was intended to effect the rights of the General Counsel vis-a-vis the Charging Party. It is clear that that was not Congress' intention in enacting § 3(d). Rather, Congress intended to establish the role of the General Counsel vis-a-vis *the Board*. Whereas previously the Board had been both prosecutor and judge, the prosecutorial role was to be taken from the Board and given to the General Counsel. *Haleston Drug Stores v. NLRB*, 187 F. 2d 418, 421 (9th Cir.) *cert. denied* 343 U.S. 815 (1951); *Frito Co. v. NLRB*, 330 F. 2d 458, 462 (9th Cir. 1964).

What we seek here is the right to submit evidence at the hearing, and to request the Board, in its *judicial* capacity, to amend the complaint to encompass the evidence introduced. This was a right which Charging Parties had prior to 1947, and the removal of the Board's *prosecutorial* functions can in no way be read to have affected that right.

We are aware that this Court, for reasons entirely different from those given by the Board, likewise ruled seven years ago that the Board may not amend a complaint at the Charging Party's request over the objection of the General Counsel. *International Union of Electrical Workers v. NLRB (NECO Corp.)*, 110 U.S. App. D.C. 91, 289 F. 2d 757 (1960). This Court did not "employ the rhetoric of 'public interest'" (*Scofield, supra*); indeed, it described the broad role which the Charging Party is entitled to play in a

Board proceeding (289 F. 2d at 760). For this reason, this Court said it "might be disposed to accept petitioner's distinction between 'issuance' and 'amendment' and hold that the Board's power under § 10(b), to amend over opposition of the General Counsel, was not obliterated by the later enactment of § 3(d)," were it not for "the legislative history and judicial gloss upon § 3(d)." (*Id.* at 760-61).

We respectfully submit that neither the legislative history nor a judicial gloss dictate the result reached by this Court in *NECO*. Moreover, whatever the validity of *NECO* at the time it was decided, subsequent events have sapped it of continuing vitality. We discuss these matters herein.

1. *The Legislative History Supports Our View that the Board Retains the Power to Amend Complaints over the Objection of the General Counsel*

In *NECO*, this Court apparently assumed that, when Congress added § 3(d) in 1947, its failure to change § 10(b) was an inadvertence.⁶ This assumption is erroneous. The bill which passed the House would have revised § 10(b) so that the Board would no longer have power to *amend* complaints, only to *approve* amendments:

"Any such complaint or answer may, *with the approval* of the Board, or *with the approval* of the member, examiner, or examiners, conducting the hearing, be amended at any time prior to the issuance of an order based thereon." Leg. Hist. 194 (Emphasis supplied).⁷

Had this revision been enacted, it would have indicated a desire on the part of Congress to take away the Board's pre-

⁶ "In enacting § 3(d), Congress did not *expressly* abrogate the existing and *apparently inconsistent* provision of § 10(b) relating to amendment." 289 F. 2d at 761. (Emphasis supplied.)

⁷ "Leg. Hist." refers to the two-volume "Legislative History of the Labor-Management Relations Act of 1947," published by the NLRB.

existing power of amendment. *In conference, however, § 10(b) was restored to its original form.*

It is thus clear that the retention of Section 10(b) in its original form was not, as this Court supposed in *NECO*, an inadvertence. On the contrary, it was a deliberate act by the same conferees who drafted Section 3(d) in its final form. It cannot be assumed, therefore, that Section 3(d) *sub silentio* overruled Section 10(b). Rather, it is clear that Congress did not intend Section 3(d) to alter the Board's amendment power.

Additional support for our view is found in the statements of both sponsors and opponents of the 1947 Act. They repeatedly emphasized that Section 3(d) would take away the Board's pre-existing power to *issue* complaints, but we can find not one statement that Section 3(d) would take away the Board's *amendment* power. Particularly significant is Senator Taft's analysis of Section 3(d); 2 Leg. Hist. 1622:

"The Board itself has been sensitive to the reproach that it acts as judge, jury, and prosecutor, and in recent years has promulgated regulations which have delegated the power of *issuing* complaints to the various regional directors. Presumably the General Counsel would keep these regulations in effect, except that the regional directors would act pursuant to his general instructions rather than those of the Board." (Emphasis supplied.)

Senator Taft thus viewed § 3(d) as transferring supervision of the regional directors—who issued complaints—from the Board to the General Counsel. *But the power of amendment had never been delegated to the regional directors* and Senator Taft clearly was not contemplating a transfer of that power.

See also, e.g., the remarks of Rep. Landis, 1 Leg. Hist. 905: "The General Counsel . . . will have the authority

over *whether* complaints of unfair labor practices shall be filed against employers or Unions" (emphasis supplied); and President Truman's veto message, 1 Leg. Hist. 918: "The General Counsel would decide . . . *whether* charges were to be heard by the Board" (emphasis supplied). The veto message was intended as a parade of "horribles"; the particular section from which this quote is excerpted itemized the ways in which the Act "would invite conflict between the Board and its General Counsel." Had the Act abrogated the Board's amendment power, it is unlikely that the veto message would have overlooked it.

In sum, the legislative history contains no indication that Congress intended other than what it said by its deliberate retention of Section 10(b). To conclude, as this Court did in *NECO*, that all Section 10(b) means is that the Board can *refuse* amendments requested by the General Counsel (289 F. 2d at 761) is to give the statutory words a strained construction unwarranted by the legislative history.⁸

2. *There is No "Judicial Gloss" Dictating a Contrary Result*

This Court, in *NECO*, cited the legislative history and "judicial gloss" as dictating its decision that § 3(d) abrogated the Board's amendment power. We have already shown that the legislative history does not dictate that result, but indeed suggests the opposite. We now show that the *NECO* result is not dictated by a weight of judicial decisions.

We have undertaken a diligent search, and have been unable to find any pre-*NECO* judicial decisions holding that § 3(d) abrogated the Board's amendment power. The only case cited in *NECO* for that proposition involved the power to *issue* complaints, not to *amend* them. *NLRB v. Bar-Brook Mfg. Co.*, 220 F. 2d 832 (5th Cir. 1953).

⁸ Indeed, this construction is precisely what would have been accomplished by the House Bill's revision of Section 10(b), quoted above, which was rejected by the conferees.

Indeed, the only pre-NECO decision we have found discussing the amendment issue at all is *NLRB v. Sterling Furniture Co.*, 202 F. 2d 41 (9th Cir. 1953), and there the court expressly held that Section 10(b) empowers the Board to amend complaints. In *NECO*, this Court distinguished *Sterling* on the ground that there the General Counsel had approved the amendment. 289 F. 2d at 761. But the Ninth Circuit has recently declared that its decision in *Sterling* would have been the same even if the General Counsel had not approved the amendment. *Frito Co. v. NLRB*, 330 F. 2d 458, 463 (9th Cir. 1964):

"The Board argues that the *Sterling* case, *supra*, is inapposite inasmuch as the General Counsel in that case approved the amendment of the complaint. *There is, however, no reason to think that the result would have been otherwise had the General Counsel not approved the amendment . . .*" (Emphasis supplied.)

Nor has there developed, since *NECO*, such an avalanche of judicial decisions as to suggest that there is *now* a judicial gloss dictating the *NECO* result. The Fourth Circuit has expressly followed *NECO*, *Wellington Mill Div. v. NLRB*, 330 F. 2d 576, 590-91 (4th Cir. 1964), and the Third Circuit has reached the same result by adopting the Board's "public rights-private rights" distinction since discredited in *Scofield*. *Piasecki Aircraft Corp. v. NLRB*, 280 F. 2d 575, 588 (3d Cir. 1960).⁹ But the Ninth Circuit has expressly held that Section 10(b) empowers the Board to amend the complaint over objection of the General Counsel, if the evidence introduced at the hearing warrants such

⁹ The holding in *Piasecki* was supported by citation of the Supreme Court's discussion in *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261, 264-65, which the Board claimed held that there are no private rights under the Act. In *Scofield*, the Supreme Court declared that *Consolidated Edison* did not stand for that proposition. 382 U.S. at 220-21.

amendment. *Frito Co. v. NLRB*, 330 F. 2d 458 (9th Cir. 1964).¹⁰

Moreover, probably the most important of all, the Supreme Court in *Scofield* appears to have declared that, once the complaint has issued, the Board rather than the General Counsel controls the scope of the hearing, 382 U.S. at 219:

"The statutory machinery begins with the filing of an unfair labor practice charge by a private person . . . When the General Counsel issues a complaint and the proceeding reaches the adjudicative stage, *the course the hearing will take is in the agency's control . . .*" (Emphasis supplied.)

3. *The Recent Trend of Judicial Decisions Expanding the Rights of Charging Parties Dictates that They Be Allowed to Request the Board to Amend Complaints*

We have shown that the language of the statute and the legislative history indicate that the Board may amend complaints at the request of the Charging Party, and that there is no judicial gloss dictating a contrary result. We now show that the result we seek is also supported by the trend

¹⁰ In *Frito*, the court declared that the General Counsel can preclude such occurrences by objecting to the Charging party's evidence as outside the scope of the complaint, 330 F. 2d at 462, 465, but that, once the evidence is admitted, Section 10(b) gives the Board free rein to amend. We believe *Frito* creates an anomalous dichotomy in which the Charging Party's ability to secure amendments depends upon its agility to slip evidence into the record (or, conversely, upon the sleepiness of the General Counsel), and that it imposes a partial barrier on the operation of Section 10(b) not warranted by the language of Section 10(b) or the legislative history. The partial limitation expressed in *Frito* was premised, again, on the "public rights" theory (330 F. 2d at 462) subsequently discredited in *Scofield*.

In any event, certain of the Union's claims were based on evidence introduced, as it advised the Trial Examiner at the hearing (J.A. 332). Thus, even if this Court were to adopt the *Frito* distinction, a remand would be required.

of recent decisions expanding generally the rights of Charging Parties.

This Court enumerated in *NECO*, the rights which had already by that time been accorded to Charging Parties:

"[T]he charging party has a most significant role to play in the process of determining an unfair labor practice. The charge of such party is a prerequisite to any investigation, and to the issuance of a complaint. Once a complaint issues, the general counsel cannot settle the case, and thus dispose of it without affording the charging party an opportunity for hearing, unless the charging party agrees. During the hearing, the charging party can introduce evidence, call and cross-examine witnesses, and propound theories which the general counsel fails or refuses to rely upon. It can appeal the examiner's decision to the Board and can invoke Board action even if the general counsel does not." 289 F. 2d at 760.

Since *NECO*, the rights of the Charging Party have been broadened still further. In *Scofield*, the Supreme Court expressly held that the Charging Party could intravene in the court of appeals to protect its "parochial private interests", 382 U.S. at 218, and could petition for certiorari even if the General Counsel elects not to do so, *Id.* at 221-22. More important, *Scofield* reflected an approach to the Charging Party's entitlement to protect its private interests wholly at war with the considerations which have led the Board to deny amendment. It must not be forgotten that, as late as 1965, the Board argued to the Supreme Court in *Scofield* that Charging Parties have no private rights to protect. Small wonder, then, that the Board was still denying Charging Parties the right to seek amendment of complaints.

The courts of appeals have shown a similar movement toward expanding the Charging Party's role. In *Leeds &*

Northrup Co. v. NLRB, 357 F. 2d 527 (3rd Cir. 1966), the Third Circuit, relying heavily upon *Scofield*, ruled that once the General Counsel issues a complaint he cannot settle the case over the Charging Party's objections without a hearing. The court expressly reversed a prior holding to the contrary, which it had issued in the same year as this Court's *NECO* decision: *Insurance Workers v. NLRB*, 46 LRRM 2028 (3d Cir.) *cert. denied* 363 U.S. 806 (1960). The court in *Leeds & Northrup* gave § 3(d) a narrower interpretation than did this Court in *NECO*:

"Under the prosecutory phrase of Section 3(d) of the Act, the delegation of discretion [to the Regional Director] to issue or not issue a complaint of unfair labor practice is not improper. *But once issued, an adjudicatory phase of the administrative process arises necessitating appropriate avenues of review, both administrative and judicial.*" (*Leeds & Northrup*, 357 F. 2d at 535, emphasis supplied).

In *Retail Clerks v. Food Employers Council, Inc.*, 351 F. 2d 525 (9th Cir. 1965), cited with approval in *Scofield*, 382 U.S. at 220, the Ninth Circuit ruled that the Charging Party could prosecute a § 10(1) injunction action brought by the Regional Director, even after the Regional Director had changed his mind and opposed issuance of the injunction. The court reasoned that:

"The strict dichotomy between public and private interests which the Regional Director espouses in his effort to limit the participation of the Charging Parties has been subjected to well-deserved criticism . . . We . . . find no inconsistency in allowing the 'public' interest to be represented by the 'private' charging parties when the representative of the NLRB is either unable or unwilling to do so." 351 F. 2d at 529, n. 2.

Indeed, the Board itself has recently broadened the rights of Charging Parties to include the raising of issues in back

pay proceedings over the objection of the General Counsel. *Journeyman Plasterers' Protective and Benevolent Society of Chicago, Local No. 5 (John P. Phillips Plastering Co., Inc. and John J. Spinelli)*, Case No. 13-CB-1235.¹¹ The Charging Party sought to introduce evidence of losses in addition to those claimed by the General Counsel. The Trial Examiner, echoing the precise reasoning advanced by this Court in *NECO*, refused to receive such evidence, stating that the Charging Party "lacks authority to amend the General Counsel's theory of, or pleading by way of complaint and backpay specifications in an unfair labor practice case. These powers are vested by statute exclusively in the General Counsel of the Board . . . It follows that, since the General Counsel has elected to stand on his pleadings, he has propounded issue(s) which may not be amended, revised or impugned by [the Charging Party]." *The Board reversed this ruling:*

"We do not agree with the above rulings of the Trial Examiner. We perceive no reason either in law or in equity why the Charging Party in this instance should not have the right to introduce evidence disputing the correctness of the General Counsel's backpay specifications and their underlying computations and assumptions, *and furnishing the basis for an amendment of the specifications.*

"Accordingly, we shall remand the proceeding for further hearing before the Trial Examiner for the purpose of affording the Charging Party an opportunity to introduce material, relevant and competent evidence bearing on the issue of whether the backpay specifications properly define the period and amount of Respondent's backpay liability" (Emphasis supplied).

¹¹ The full text of this decision, which is unpublished, is attached to Petitioner's Opposition to Motion to Transfer, previously filed herein.

It is ironic, indeed, that the Board has expressly rejected, with respect to backpay proceedings, the very position which it still espouses with respect to original proceedings.

Finally, it should be recognized that the burgeoning role of the Charging Party in NLRB cases is only a part of a much broader development in the law. There is a growing disposition to permit private citizens to participate in, and *shape the issues in*, administrative proceedings once thought closed to all but the official defenders of the "public interest." One of the most dramatic and important evidences of this trend is this Court's decision in *Office of Communication of United Church of Christ v. FCC*, — U.S. App. D.C. —, 359 F. 2d 994 (1966), holding that representatives of the listening public are entitled not only to intervene in FCC license renewal proceedings, but also to present issues not advanced by any other participant therein. 359 F. 2d at 1007-1010. In so holding, this Court relied in part upon the Supreme Court's decision in *Scofield*, *supra*:

"Nor does the fact that Commission itself is directed by Congress to protect the public interest constitute adequate reason to preclude the listening public from assisting in that task. Cf. *UAW v. Scofield*, 382 U.S. 205 (1965)" (359 F. 2d at 1003).

For another instance of the trend expanding the rights of private parties to shape the law, see *Flast v. Gardner*, Supreme Court of the U.S., No. 410, October Term, 1967, *cert. granted* 36 U.S.L. Week 3157 (Oct. 16, 1967), in which the Supreme Court has decided to reconsider the doctrine that taxpayers lack standing to challenge the constitutionality of federal expenditures.

In summary, we believe that, whatever the apparent validity of *NECO* when decided, subsequent events have made clear that the Charging Party is entitled to the right which Section 10(b) literally gives him—the right to ad-

dress motions to the Board for amendment of the complaint, notwithstanding the objections of the General Counsel.

CONCLUSION

The Board's order, so far as it goes, should be enforced immediately. Those aspects of the Board's decision which deny additional relief sought by the Union should be remanded.

Respectfully submitted,

JOSEPH E. FINLEY

MELVIN S. SCHWARZWALD

METZENBAUM, GAINES,

KRUPANSKY, FINLEY & STERN

700 Union Commerce Building

Cleveland, Ohio 44115

MICHAEL H. GOTTESMAN

BREDHOFF & GOTTESMAN

1001 Connecticut Avenue, N. W.

Washington, D. C. 20036

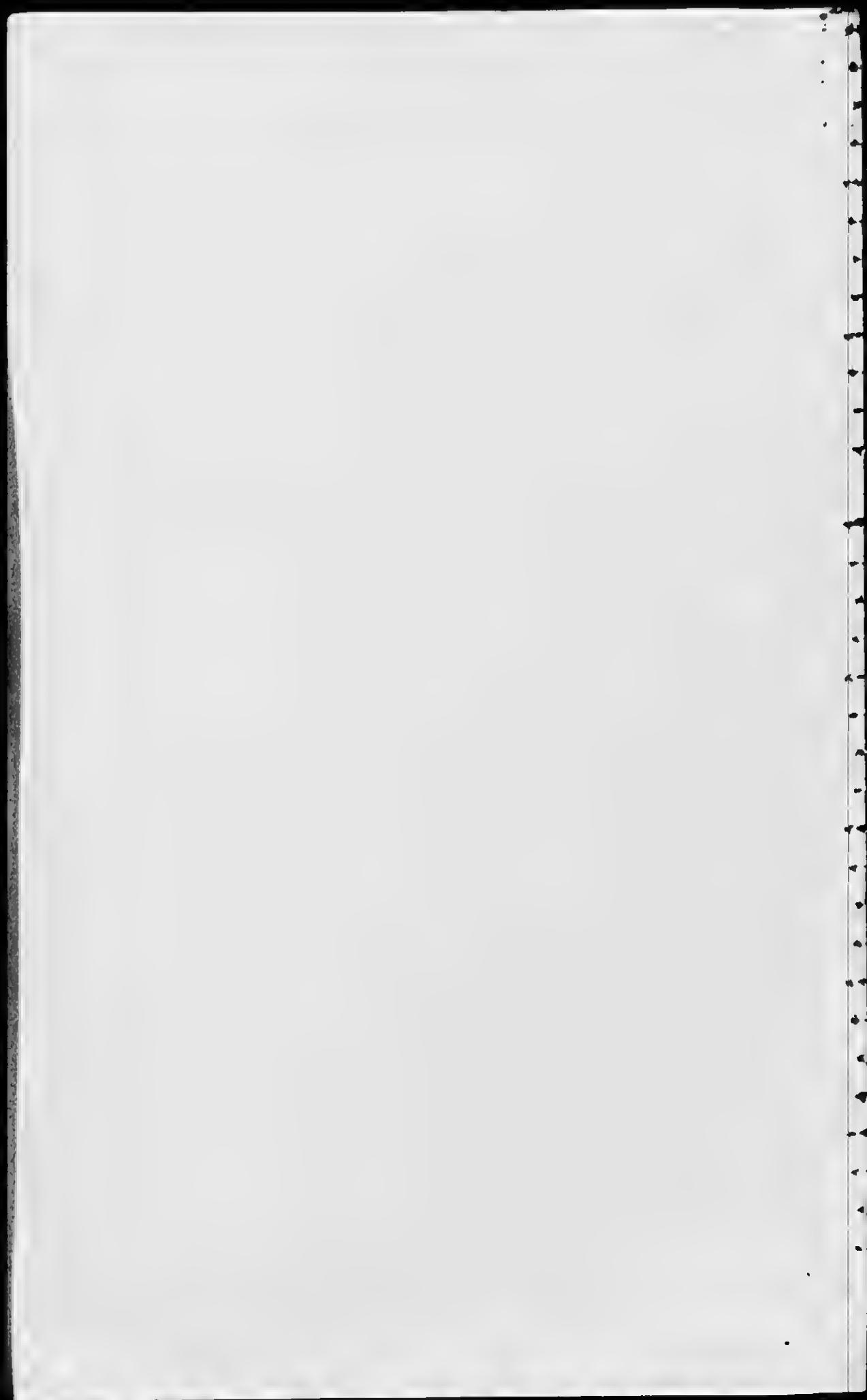
*Attorneys for United Steelworkers
of America, AFL-CIO*

OF COUNSEL:

BERNARD KLEIMAN

10 South LaSalle Street

Chicago, Illinois



REPLY BRIEF FOR THE UNITED STEELWORKERS
OF AMERICA, AFL-CIO

IN THE
United States Court of Appeals
FOR THE
District of Columbia Circuit

No. 21,043

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
v. *Petitioner,*
NATIONAL LABOR RELATIONS BOARD, *Respondent.*

No. 21,338

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*
v.
LUXAIRE, INC., *Respondent.*

ON PETITION TO REVIEW, AND PETITION TO ENFORCE
A DECISION AND ORDER OF THE NATIONAL
LABOR RELATIONS BOARD

JOSEPH E. FINLEY
MELVIN S. SCHWARZWALD
MERZENBAUM, GAINES,
KRUPANSKY, FINLEY & STERN
700 Union Commerce Building
Cleveland, Ohio 44115
MICHAEL H. GOTTESMAN
BREDHOFF & GOTTESMAN
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036
*Attorneys for United Steelworkers
of America, AFL-CIO*

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 3 1968

Nathan J. Paulson
CLERK

OF COUNSEL:

BERNARD KLEIMAN
10 South LaSalle Street
Chicago, Illinois 60603



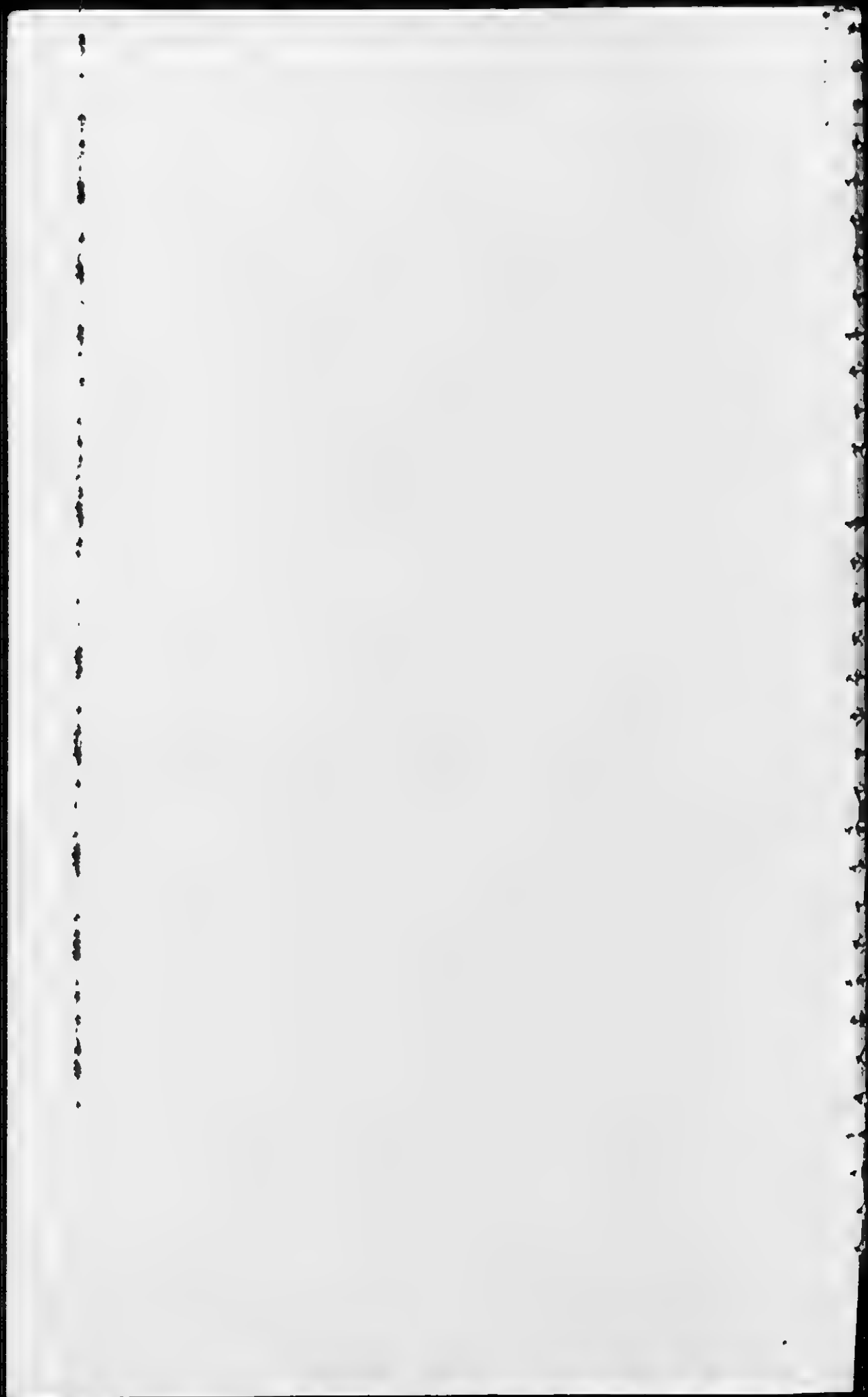


TABLE OF CONTENTS

	<i>Page</i>
I. THE VALIDITY OF THE CERTIFICATION.....	1
A. "Base Rates" Referred Only to the Wages of Incentive Em- ployees	2
B. Base Rates Do Not Include Shift Premiums.....	5
C. Base Rates Were Higher At the Medina Plant	6
D. The Company Had Opportunity to Reply to the Union's Position on Base Rates and Standards, and It Utilized That Opportunity	9
II. THE COMPANY'S REFUSAL TO RECOGNIZE THE UNION'S MAJORITY AS DEMONSTRATED IN THE STRIKE AND ON THE PICKET LINE	13
The Substantive Principle	13
The Union's Right to Litigate this Point	13
The Company's Alleged "Surprise"	13
The Alleged Infirmities in the Proof of Majority	15
The Alleged Infirmities in the Proof of Company Knowledge.	16
III. THE BOARD'S POWER TO AMEND COMPLAINTS...	17
CONCLUSION	18

TABLE OF CITATIONS

Cases

	<i>Page</i>
Anchor Manufacturing Co. v. NLRB, 300 F. 2d 301 (5th Cir. 1962)	12
Frito Co. v. NLRB, 330 F. 2d 458 (9th Cir.)	17, 18
Holland Custard and Ice Cream, Inc., 158 NLRB No. 116, 62 LRRM 1186 (1966)	13
Hollywood Ceramics Co., Inc., 140 NLRB 221 (1962)	8, 11
Louisville Chair Co. v. NLRB, 66 LRRM 2698 (6th Cir. 1967) .	11, 12
NECO, 110 U.S. App. D.C. 91, 289, F. 2d 757 (1960)	13
NLRB v. Harris-Woodson Co., 179 F. 2d 720 (4th Cir. 1950)	13
NLRB v. Preston Feed Corp., 309 F. 2d 346 (4th Cir. 1962)	13
Otis Elevator Co., 114 NLRB 1490 (1955)	8
Reiss Associates, Inc., 116 NLRB 217 (1965)	8

Statutes

National Labor Relations Act, 29 U.S.C. § 151 et seq.	
Section 3(d), 29 U.S.C. § 153(d)	17
Section 10(b), 29 U.S.C. § 160(b)	17, 18

Miscellaneous

Glossary of Current Industrial Relations and Wage Terms, U.S. Department of Labor, Bureau of Labor Statistics (1965)	3
--	---

IN THE
United States Court of Appeals
FOR THE
District of Columbia Circuit

No. 21,043

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

No. 21,338

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

LUXAIRE, INC., *Respondent.*

ON PETITION TO REVIEW, AND PETITION TO ENFORCE
A DECISION AND ORDER OF THE NATIONAL
LABOR RELATIONS BOARD

REPLY BRIEF FOR THE UNITED STEELWORKERS
OF AMERICA, AFL-CIO

We believe that three issues which have been discussed at length in the briefs of the Board and the Company deserve some further elucidation: the validity of the certification, the strike majority, and the Board's power to amend complaints.

I. THE VALIDITY OF THE CERTIFICATION

We are amazed at the extent to which the Company, by its assertion of a "misrepresentation" in the Union's litera-

ture, has made a mountain out of a mole hill. It may be well at the outset to put the claim into perspective. The Court should look at the whole Union letter which contains the "offending" statement (J.A. 181-82). The letter contains six paragraphs. The alleged misrepresentation is a portion of the second sentence of the fifth paragraph. The Company has not challenged any other statement made by the Union in this letter¹ or elsewhere in its pre-election campaign propaganda. It seems obvious to us that the Board must have discretion to uphold elections in the face of such *de minimis* challenges, even where there was in fact a misrepresentation. As we now show, there was no misrepresentation here.

A. "Base Rates" Referred only to the Wages of Incentive Employees.

Incentive employees are those whose earnings vary with the amount of their production. A "standard" is set. If an employee's production meets the "standard," he receives the "base rate." If his production exceeds the standard, his earnings increase proportionately.

Non-incentive employees, by contrast, receive a flat hourly compensation regardless of the amount of their production. The great majority of the employees at the Elyria plant are incentive workers, and, not unnaturally, the Union directed certain of its campaign arguments to this majority.

It is perfectly obvious, from the context in which it was used, that the Union's reference to "base rates" was directed at incentive workers. The challenged sentence in which the term appeared was: "base rates of pay at the Medina plant are higher than the rates at Olsen, *and the standards*

¹ Even the Company's challenge to the remainder of this very sentence was rejected by the Hearing Officer, and was dropped at that point by the Company.

are generally better because you see, we have a voice in setting them (J.A. 182; emphasis supplied).

There is no dispute that "standards" refers solely to incentive workers. The "standard" is the number of operations which must be completed to get the "base rate." Thus, it is apparent that, as the testimony showed, this sentence was both intended and understood as applicable only to incentive workers.

The employees in the Elyria plant with whom Taggart spoke understood what he meant by the term base rates. They simply told him that the base rates in the Elyria Plant were \$1.52½ and \$1.57½. These amounts are the 12 months' rates for almost all of the incentive job classifications in the Plant (J.A. 129, 137-38, 194).

Taggart testified "base rate" and "standards" could refer, and did refer, only to incentive employees (J.A. 127-28, 133-34). Elyria employees so understood the phrase (J.A. 129, 137-38). The Court should consider, as did the Board, the phrase as one that applied only to incentive workers. This understanding of the phrase by the people actually involved in the election is confirmed by the standard reference works, cited by the Board, which indicate that the term "base rate" normally refers to incentive earnings (Bd. Br. p. 28). The sole source relied upon by the Company indicates that base rates when applied to incentive systems have a very specific meaning, the rate which is to be paid for producing the preset standard, although the term may sometimes be used to refer to other rates.²

The Company's arguments for construing "base rates" as applicable to non-incentive workers are ridiculous. For ex-

² At pp. 27-28 of the Company's Brief it refers to the definition of base rates in the *Glossary of Current Industrial Relations and Wage Terms*, U.S. Department of Labor, Bureau of Labor Statistics (1965), which defines the term base rate as having a specific meaning under an incentive system as well as referring to the possible use of the term in other contexts.

ample, the Company tries to draw sustenance (brief, p. 27) from the salutation of the Union's letter. The Union's letter was addressed: "TO ALL HOURLY RATED EMPLOYEES OF C. A. OLSEN CO." (J.A. 181). The contents of the letter, apart from the fifth paragraph, were applicable to all the employees in the plant. The Company's letters, similarly, were addressed to "All Hourly Paid Employees." Both salutations were intended to indicate that the letters were addressed to "hourly" employees, and not the "salaried" employees who were outside the bargaining unit.³

Similarly, the Company points (brief, p. 27) to its handbook as evidence that the phrase "base rates" includes non-incentive as well as incentive employees. But that handbook was prepared only a few days before the election, and its terminology was doctored as a response to the Union's claim, which had been made throughout the campaign (see *infra*), that "base rates" were higher at Medina than Elyria. Significantly, the Company had never before used the term in the way it was used in the handbook (J.A. 33-34). The handbook is nothing more than a self-serving document distributed by the Company a month after the "base rates" issue had been raised in the campaign.⁴

³ The employees in the bargaining unit were all "hourly," i.e., they received pay only for hours worked. "Salaried" employees, who are outside the bargaining unit, receive a weekly rate regardless of hours worked.

⁴ Nor is there any comfort for the Company in the language of the contract for the Medina plant. The Company points to the use of the phrase "hourly base rate of pay" in Section 2 of Article VII of the Medina contract which concerns wages. In doing so the company fails to consider the terms of Section 1 of that same Article which speaks of "employees assigned to day work, non-incentive classifications" who received "a rate not less than the hourly rate specified for labor in Appendix A." (J.A. 184). If the terms were used as consistently as the Company might attempt to lead the Court to believe, then the reference to an "hourly rate" rather than a "base rate" in Section 1 is inappropriate. In truth, the phraseology used in the

The Personnel Manager of the Company testified that, prior to that time, newly hired employees were told what their wage rate would be, they were given nothing in writing, and when the wage increases were given notices were placed on the bulletin board which simply said that incentive rates would be increased so much per hour and non-incentive rates so much per hour (J.A. 33-34). This strained use of the term had not been the Company's practice, and as the author of the Union's letter testified, he did not see a copy of the handbook or know that it was even distributed until after he received a copy of the Company's objections which called this problem to his attention (J.A. 129-30, 132).

B. Base Rates Do Not Include Shift Premiums.

In arguing that the Union's statement was incorrect, the Company also assumes that "base rates" includes shift premiums. But there is no evidence in this record, and the Company points to none, which indicates that the term base rates as used in the Union's letter was intended or understood as including shift premiums. There is only evidence that shift premiums were treated differently in the computation of compensation in the Elyria and Medina plants.

It was employees in the Elyria plant who told Union Representative Taggart, unqualifiedly, that their base rates were \$1.52½ and \$1.57½ per hour. None of those employees mentioned or considered shift premiums in their conversations with Taggart, and there is no reason to believe that when the employees read Taggart's letter they would consider shift premiums in regard to incentive earnings.

contract in the Medina plant is not internally consistent and it therefore cannot be probative. The testimony by the President of the Local Union at the Medina plant, who had been a Union officer for the past 13 years, reveals that the base rates to him involve only incentive employees (J.A. 150-51, 160).

In fact the Company's assumption is so foreign that in spite of the undoubtedly careful preparation of Company witnesses, both the Company President⁵ and the Personnel Director⁶ in their testimony used the term "base rate" as excluding shift premiums.

C. Base Rates Were Higher At the Medina Plant.

The Company's brief very deliberately repeatedly refers to the number of job classifications and the number of base "rates" in making comparisons of the wages paid in the Elyria and Medina plants. These comparisons are meaningless, however. Of the 30 job classifications, 17 were vacant at the time of the election (J.A. 462, 186, 194, 205, 44-48). Obviously, the employees were not interested in a comparison of rates on jobs they did not fill. Likewise, the "3-month" and "6-month" rates, emphasized in the Company's brief (p. 6) are also irrelevant, for the Personnel Director testified that all the Luxaire employees were receiving the 12-months rate at the time of the election (J.A. 20). Therefore, only a comparison of the 12-month rates is relevant. Finally, and most important of all, the number of employees filling each job classification is the crucial factor in determining the validity of the Union's claim.

⁵ President Lindsay testified:

"... As far as the incentives are concerned it is to take the base rate plus shift premium and multiply that by the number of earned minutes and extending it out weekly by classification and coming up with a total for average over-all plant wide total." (Emphasis supplied) (J.A. 82-83).

⁶ Personnel Director O'Dell testified:

"... As far as incentive classifications of work the base pay in my opinion is the day shift employee would be the base rate as established in the book, handbook, Exhibit Number 4, I believe. Second shift employees would be base rate plus the six cents per hour for working second shift. The third shift would be base rate plus twelve cents per hour for working the third shift. This is all classified as base pay." (Emphasis supplied) (J.A. 64).

A comparison of the germane classifications and rates, including the numbers of employees involved in each classification, is shown in the margin.⁷

The net effect of the comparison is that of 135 incentive earnings employees at the Elyria plant just prior to the election in classifications comparable to those at Elyria, at least 125 were receiving base rates $\frac{1}{2}$ cent below those at the

Base Rate Comparison ^a			
Job Classification ^b	Plant	Number of Employees	Base Rates (12 months)
Assemblers	Medina	30	1.53
	Elyria	63	1.525
Checker	Medina	1	1.58
	Elyria	4	1.575
Loader	Medina	5	1.53
	Elyria	10	1.525
Machine Operator A	Medina	41	1.58
	Elyria	29	1.575
Machine Operator B	Medina	23	1.53
	Elyria	12	1.525
Packer A	Medina	1	1.58
	Elyria	2	1.575
Packer B	Medina	2	1.53
Painter Painter-Spray }	Medina	2	1.58
	Elyria	5	1.575
Towmotor Driver Towmotor Operator }	Medina	3	1.53
	Elyria	3	1.575
Trucker	Medina	6	1.48
	Elyria	7	1.525
	Medina	114	
	Elyria	135	

(a) These figures are derived from Company Exhibits 8(a) and 9(a), which set forth the classifications and rates for all the employees in both plants for the week ending May 30, 1965, the week just prior to the election and the mailing of the Union's letter (J.A. 207-230, 255-266).

(b) Welder classifications cannot be compared as the Elyria plant has three separate welder classifications, with rates both above and below the rates for the single welder classification at the Medina Plant (J.A. 217-18, 255, 257-58).

Medina plant. Thus the Union's statement that base rates were higher in Medina was true as to at least 93% of the incentive employees. The basic pattern is just as Taggart had been told it was: Elyria base rates are all \$1.52½ and \$1.57½ per hour, and those at Medina are almost all \$1.53 and \$1.58 per hour.

The Union's letter is not a "substantial departure from the truth." At worst the letter lacks "absolute precision," since it did not contain a caveat that its statement was true of only 93% of the affected employees, but this not a ground for setting aside the election. *Hollywood Ceramics Company, Inc.*, 140 NLRB 221, 224, 223 (1962). The Company (Co. br. p. 33, 37, 41, 43), the Board (Bd. br. p. 18), and the Union agree that *Hollywood Ceramics* sets the standards to govern cases such as this one.⁸ Under *Hollywood Ceramics* the Board's decision was correct, and the bargaining order should be enforced.

Furthermore, the matter is not one of which Taggart or the Union could have special knowledge, as one-half the comparison involved the rates at Elyria, to which everyone had to realize the Union did not have full access. The only way the Union could have had such access was to be the bargaining agent, and if it had been that, there would have been no campaign and no election.

⁸ *Reiss Associates, Inc.*, 116 NLRB 217 (1965) relied upon by the Company (Co. Br. p. 36) does not involve a rejection by the Board of a Union representative's explanation of terms used in campaign literature, as the Company characterizes the decision. Rather it is a specific finding that the leaflet in question was misleading as terms admittedly meant to apply to only one contract were made to appear to apply to the wages in six contracts. 116 NLRB at 219. The Board in *Reiss* specifically distinguished *Otis Elevator Company*, 114 NLRB 1490 (1955), a case more like the present case, "where not only were the employees in a position to themselves evaluate the literature, but the inaccuracies were apparently inadvertent and the information was 'substantially correct'." 116 NLRB at 218.

D. The Company Had Opportunity to Reply to the Union's Position on Base Rates and Standards, and It Utilized that Opportunity.

The issue of comparison of base rates and standards between the Elyria and Medina plants was not a new one to the campaign. In April, even before the date for the election was set, the Union raised the comparison of base rates at a meeting of 60 to 65 of Luxaire's employees, approximately 25% to 30% of the bargaining unit (J.A. 429, 149-50). At this meeting Michael Klimko, President of the Local Union representing employees at the Medina plant, told the employees that the base rates were higher in Medina than they were in Elyria (J.A. 149-50).⁹

Company President Lindsay admitted several times that he had indirectly heard about this claim made by Klimko, and that he had these statements in mind in preparing Company literature during the rest of the campaign, especially the Company's letter of May 13. Lindsay specifically admitted that he heard about the base rate claim in the first week in May (J.A. 85-86). Klimko placed the date of his speech as April 29, 1965 (J.A. 149-50).

Within a week after the meeting the Company made its first response to this claim when it spoke of wage rates in its letter of May 6. In the letter of May 6, the Company pointed out that the wage increase at Medina and Elyria had been the same that year (J.A. 174).

⁹ The Company attempts to cast some doubt upon the clear testimony that Klimko addressed 25%-30% of the employees and raised the base rate issue with them (Co. br. Nt. 19). The testimony on this point speaks for itself (J.A. 149-50). Even Counsel for the Company at the representation hearing referred to the meeting where Klimko "addressed the employees" (J.A. 159). This attempt to cast doubt indicates a recognition of the fact that the Company's Objection to the Election cannot be substantiated whatever the Union did, even if it published the substantial misrepresentation the Company claims it did, as it was not made at a time when the Company could not reply and therefore is not a basis for setting aside the election.

The Company's response to the Union's statement about base rates occupied a considerable portion of its letter of May 13. To be sure, the Company's answer was not a direct response to the claim. In the letter of May 13, the Company stressed such things as "straight time average hourly earnings" and "hourly average earnings." It avoided a comparison of "base rates" because it knew that such a comparison would be favorable to the Union. This attack upon the Union's position continued through the representation hearing (J.A. 203-5, Co. Ex. 5 and 6).¹⁰

The Company's May 13 letter did not come to Taggart's attention until May 27. He found it misleading in that "it tended to give the people in the Elyria plant the opinion that they were so much better off than our plant in Medina" (J.A. 129). Accordingly, Taggart prepared the letter of June 2 (J.A. 128-29). At this point it is worth returning once again to the precise text of Staff Representative Taggart's letter. The paragraph which is put in issue specifically speaks of the "rash statements" made by the Company President in his previous letter. The letter says that it is "just so we set the record straight, . . ." and then Taggart repeats generally what Klimko had said back in April (J.A. 181-82).

The Company had not used the term "base rates" to describe any of its wage rates until nearly a month after Klimko's speech. The handbook distributed on May 28 is the first use of the term. Apparently, this was a further attempt to answer the Union's claim of deficiency in this area.

¹⁰ Although these Exhibits were rejected, it is interesting to see that they cast the Company's initial approach in defense of the issue as a comparison of average hourly earnings rather than directing itself to the question of base rates. The Company attempted to preserve the same basis in its preparation of Company Exhibits 8(a), 8(b), 9(a) and 9(b), which were presented in the representation hearing (J.A. 207-67).

President Lindsay testified that the handbook was to partially allay the "running battle with the Union and the propaganda that was put out" (J.A. 72).

Furthermore, the Union's absolute honesty and complete lack of deceit is shown by the testimony of Taggart and Klimko, the two people who directly represented the Union. Taggart quite honestly said that no one told him about the Company's handbook distributed on May 28 until after the election. As soon as he saw the question raised in the objection, he began his investigation to provide information to the Board and then, and only then, discovered the handbook (J.A. 130, 132). Klimko not only informed employees about base rates, which interested incentive employees, but when faced with a question about the rates being paid to non-incentive employees, freely and openly admitted that the rate for die setters at the Elyria plant was more than 40 cents higher than the rate at the Medina plant. This conversation took place in a meeting of the Union's organizing committee of nine or ten employees early in April (J.A. 159, 164). Had the Union intended deceit in its comparison of wage rates, Klimko would no doubt have avoided that question or answered it untruthfully. He did neither.

The basic consideration in determining whether a secret ballot election should be set aside is the impact of any alleged misconduct on the election. If the impact is not "significant" the "laboratory conditions" in which elections are to be conducted are not impaired. See *Hollywood Ceramics Company, Inc.*, 140 NLRB 221, 223-24 (1962). The opportunity to make an effective reply to even the most reprehensible misrepresentations will often remove all impact of the misrepresentation on the election or even boomerang that impact against the party making the misrepresentation. *Louisville Chair v. NLRB*, 66 LRRM 2698, 2702 (6th Cir. 1967): ..

"Respondent contends, however, that regardless of the amount of time available to reply it could not effectively refute the misleading implications of the handbill because of the complexity of the subject involved . . . [W]e are not persuaded by this argument. Having deliberately by-passed its opportunity to reply, the Respondent cannot now contend that the Union campaign material, which was refutable, prevented the exercise of a free choice by its employees in the election of their bargaining representative. Cf. *Ralston Purina Co.*, 147 NLRB 506, 56 LRRM 1243 (1964)."

In this case, unlike *Louisville Chair*, the statement in the Union letter which the Company has challenged was not refutable, and undoubtedly that is why the Company did not refute it when earlier made. The Union's position on base rates was consistently maintained for more than a month, and was substantially accurate. The Company knew of the Union's position, the Company had ample opportunity to reply to the Union's position, and the Company replied as best it could. If the Company had desired to do so, it could have published for its employees the base rate comparisons which are set forth in its Brief to this Court in any of its letters written during the month of May. Instead, it chose to speak of average hourly earnings.

The issue of base rate and standard comparisons was before the voters for over a month. They made their own evaluation and cast their secret ballots in accord with their convictions. The Company has failed to sustain "its burden of establishing the requisite unfairness in the conduct of the election . . . " *Anchor Manufacturing Company v. NLRB*, 300 F. 2d 301, 303 (5th Cir. 1962). The certification should be upheld and the Board's bargaining order enforced.

II. THE COMPANY'S REFUSAL TO RECOGNIZE THE UNION'S MAJORITY AS DEMONSTRATED IN THE STRIKE AND ON THE PICKET LINE.

The Substantive Principle

The Company challenges the proposition that a majority strike and picketing in support of a Union's recognition demand is reliable proof of a Union's majority (Co. brief, p. 38). The Company is alone in this contention. Both the Trial Examiner (J.A. 291) and the Board in its brief (p. 32) admit this proposition, and it is supported by impressive judicial and Board authority. *NLRB v. Harris-Woodson Co.*, 179 F. 2d 720 (4th Cir. 1950); *NLRB v. Preston Feed Corp.*, 309 F. 2d 346 (4th Cir. 1962); *Holland Custard and Ice Cream, Inc.*, 158 NLRB No. 116, 62 LRRM 1186 (1966).

The Union's Right to Litigate This Point

The Company contends that the Union was not entitled to litigate this theory, because it was not embraced by the General Counsel (Co. brief, p. 35). But the General Counsel acknowledged that the Union's theory was within the allegations of the complaint (J.A. 291) and, as this Court has recognized, "during the hearing the charging party can . . . propound theories which the General Counsel fails or refuses to rely upon." *NECO*, 110 U.S. App. D.C. 91, 289 F. 2d 757, 760 (1960).

The Company's Alleged "Surprise"

The Company, in its brief, asserts that it was "caught by surprise" (p. 35) at the hearing by the Union's injection of the strike-majority theory and that it was "totally unprepared" to "defend against the Union's newly advanced theory" (p. 17). These belated appeals are, to say the least, disingenuous.

The Company was first advised of the Union's theory even before the strike began. In its letter of March 30, 1966,

announcing the employees' intention to strike for recognition, the Union recited the theory explicitly (J.A. 473). The theory was then repeated in the charge filed by the Union on June 20, 1966, which initiated the present proceeding (J.A. 350-51). The complaint thereafter issued by the General Counsel was, as his representative acknowledged (J.A. 291), "broad enough to encompass this theory." Moreover, the Company had no reason to assume that the General Counsel was foreclosing litigation of the theory, for there was no "dismissal letter" as is normally sent out by the General Counsel when he rejects the allegations of a charge in whole or in part. Finally, a week before the hearing, the Union subpoenaed a list of the employees "on the Company's payroll on March 31, 1966," a list which the Company produced and which was introduced into evidence at the hearing (J.A. 293-95, 378-412). This list was irrelevant to any issue in this case except the Union's majority-proof theory, and accordingly service of the subpoena constituted additional notice to the Company that the theory would be advanced at the hearing.

It is significant that no claim of surprise was advanced by Company Counsel when the issue arose at the hearing (J.A. 289-92), nor did he request a recess to enable the Company to prepare a response to the theory. His sole objection was that the theory was not being advanced by General Counsel and therefore was not litigable, a claim which was properly rejected by the Trial Examiner (J.A. 292).

In fact, the Company was not at all surprised by the Union's advancing its majority-proof theory. The Company's failure to produce witnesses to counter the Union's proof resulted not from a lack of notice, but because the evidence introduced by the Union was correct and totally unimpeachable. Plainly, the "surprise" claim is an eleventh-hour invention of the Company's counsel, advanced in an effort to becloud the clear proof that the Union represented a majority of its employees.

The Alleged Infirmities in the Proof of Majority

Both the Company (brief p. 36) and the Board (brief, pp. 32-33) assail the Union's evidence as somehow insufficient to prove that a majority of the employees picketed during the recognition strike. These attacks are totally unfounded.

The Union introduced, *without objection either as to form or authenticity*,¹¹ a list of those who had picketed during the strike. It was testified that the list was prepared by the three top officers of the local union, who were present on the picket line virtually every day, and that it included those whom one or more of the three had seen on the picket line (J.A. 292-303, 313-27).

Wholly apart from the list, witness Harold Smith testified that he had personally seen on the picket line all but three of those whose names appear on the list (J.A. 300), and witness Ray Bentley testified that he had personally seen on the picket line 95% of those whose names appear on the list (J.A. 322). Thus, each of these witnesses was testifying from personal observation that he saw a majority of the employees on the picket line.

None of this testimony was contradicted. No evidence was introduced suggesting that any person whose name appeared on the list did not in fact picket. With the record in this state, we simply cannot comprehend the claims of the Company and the Board that the *fact*—picketing by a majority of the employees—was insufficiently proved.

It is now suggested that the list was an inappropriate method to prove the majority. But nobody objected at the hearing to the admission of the list for that purpose.¹² Had

¹¹ The sole objection was the Company's contention that the list was irrelevant because the picket-majority theory was not properly in issue. As already indicated, the objection was properly overruled by the Trial Examiner.

¹² See footnote 11, *supra*.

such an objection been made and sustained, the Union could have and would have proven its majority by the more time-consuming route of calling each of the picketers as a witness. The lack of objection to the list gave the Union no reason to think that this course was required. In any event, as we have shown, the list was not the sole proof of majority. There was also the eye-witness testimony of witnesses Smith and Bentley that each *saw* a majority of the employees on the picket line.

The Alleged Infirmities in the Proof of Company Knowledge

Finally, both the Company (brief, p. 36) and the Board (brief, pp. 32-33) suggest that there is insufficient evidence that the Company *knew* that a majority of its employees were striking and picketing.

To be sure, the Union did not (as it could not) introduce evidence of the Company's state of mind. But Company knowledge was a fact which simply *had* to be inferred from the evidence in this record.

The Union proved that a substantial majority of the Company's employees were on strike throughout the eleven weeks. How could the Company *not* know this fact? It had to run the plant, and the absence of so many employees could hardly go unnoticed. It had to pay those who came to work, and it must have noticed that there were very few paychecks to be issued. And, most significant, it introduced no evidence suggesting that it had any doubt about the fact that a majority of its employees struck, thus failing to rebut the inescapable inference that, if a majority of its employees were on strike, it must have known of the fact.

Likewise, the Union proved that a substantial majority of the Company's employees performed picket duty during the strike. How could the Company *not* know this fact? The picketing occurred at its plant entrance; Company officials

and supervisors had to cross the picket line to get to work; and the picketing occurred throughout an eleven-week period. Again, the Company introduced no evidence suggesting that it had any doubt about the fact that a majority of its employees were picketing, and the normal inference of Company knowledge is therefore un rebutted.

Finally, it should be remarked that the Union had put the Company on notice, in advance of the strike, that it was utilizing this means to prove again its majority (J.A. 473). In view of this explicit notice, one would expect that the Company would have been alert to assemble any evidence which might support a doubt of the Union's claim. The Company's failure to introduce any evidence of doubt is therefore all the more revealing.

III. THE BOARD'S POWER TO AMEND COMPLAINTS

In our opening brief, we showed that while the General Counsel has exclusive power over the *issuance* of complaints, the Board has power to *amend* complaints after they have been issued. In its brief (p. 37), the Board accuses us of employing a "choice of terminology" designed to "obfuscate the facts." We must reiterate that the choice of terminology is not ours, but Congress'. It is Congress which declared, in Section 3(d), that the General Counsel has final authority over the "issuance of complaints." And it is Congress which declared, in Section 10(b), that complaints "may be amended" by the Board.

In an effort to prove that Section 10 (b) does not mean what it says, the Board of course feels obliged to offer an alternative interpretation. Its brief (pp. 38-39) embraces the construction put upon Section 10(b) by the Ninth Circuit in *Frito*:¹³ that the Board may amend complaints, over

¹³ *Frito Co. v. NLRB*, 330 F. 2d 458.

the objection of the General Counsel, where the evidence actually introduced shows that additional violations of the Act have occurred. In our opening brief (p. 45 n. 10), we explained why we believe *Frito* does not *fully* comport with the mandate of Section 10(b). But it should be recognized that even under the *Frito* interpretation the Union was entitled to consideration of a part of its motion, and the Board's brief is therefore a confession of error in part.

When the Union renewed its motion to amend at the close of the General Counsel's case, Union counsel pointed out that certain of the additional allegations sought were supported by evidence already introduced (J.A. 332). The Trial Examiner agreed that this was so, but nevertheless ruled that he had no authority to amend the complaint (J.A. 332-33).

One of the allegations which the Union had sought to add to the complaint by its motion was that the Company had sent letters threatening employees with loss of insurance and other benefits if they continued their strike (J.A. 366). These letters were actually introduced into evidence (J.A. 413, 414). Accordingly, under *Frito*, the Board was authorized to amend the complaint to reach their validity. Yet the Trial Examiner ruled that he lacked the power to amend.

It follows that, if this Court accepts Board counsel's belated endorsement of *Frito*, it must remand this aspect of the case for a ruling on the merits of the motion to amend.

CONCLUSION

The Board's order, so far as it goes, should be enforced immediately. Those aspects of the Board's decision which

deny additional relief sought by the Union should be remanded.

Respectfully submitted,

JOSEPH E. FINLEY
MELVIN S. SCHWARZWALD
METZENBAUM, GAINES,
KRUPANSKY, FINLEY & STERN
700 Union Commerce Building
Cleveland, Ohio 44115

MICHAEL H. GOTTESMAN
BREDHOFF & GOTTESMAN
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

*Attorneys for United Steelworkers
of America, AFL-CIO*

OF COUNSEL:

BERNARD KLEIMAN
10 South LaSalle Street
Chicago, Illinois 60603